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ABSTRACT

This volume presents the results of a three-year study of the impact of New York State's strict drug law, which was enacted in 1973. The study was undertaken by the Joint Committee on New York Drug Law Evaluation, established by the Association of the Bar of the City of New York and the Drug Abuse Council, Inc. The volume has three main sections. The first section explores the effects of the 1973 drug law on drug use, crime, cost to the state, incarceration of young people, recruitment of informants, and rate of commitments to state prisons. The second section attempts to account for the disappointing results of the 1973 drug law. The criminal justice process as a whole did not seem to increase the threat to the offender. Court delays also reduced the threat. The third section contains observations and lessons for the future. It examines the difficulties of implementation, what could have been done to improve implementation, and possibility for future improvement. (Author/JL)

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The Nation's Toughest Drug Law: Evaluating the New York Experience

Final Report of the Joint Committee on New York Drug Law Evaluation

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National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice

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Final Report of the Joint Committee on New York Drug Law Evaluation

March 1978

National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice

National Institute of Law Enforcement
and Criminal Justice
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FOREWORD

When the New York State Legislature passed the 1973 drug law, the effects of which are evaluated in this study, the legislators hoped to stem the tide of widespread drug abuse and related socioeconomic effects that had not been notably checked by many years of prior national, state, or local control efforts.

The results, documented in this report, form an absorbing chapter in the continuing history of how societies have attempted to control crime by different strategies. Only recently, however, have societies tried consciously and systematically to evaluate how well their strategies have worked, or how and why they have failed to work. Intensive broad-based evaluations of the impacts of public policy changes are still relatively rare, probably because they tend to be costly, complex, time-consuming (and therefore often untimely), difficult, and likely to produce results that can be disquieting to all of the segments of society involved.

When the National Institute undertook this evaluation we recognized that any single study could not even hope to address, let alone resolve, all the research issues about legislative implementation processes and the impacts of this particular law that might be of interest for national, state, and local policy perspectives.

The evidence of this study and the daily newscasts indicate that the drug abuse problems this law addressed are still with us. If the New York drug law and the attendant efforts by criminal justice system administrators have not eliminated these problems, we know now, as a result of this evaluation, what it was that was done, why it was done, what effects it had, and what results were achieved. In short, we have increased the understanding which all of us have of a complex set of problems and of the difficulties which inhere in attempts to solve them. The continuing development of such knowledge and understanding is the best basis on which we can build future policies directed toward enlightened and effective control of drug abuse problems.

Blair G. Ewing
Acting Director
National Institute of Law
Enforcement and
Criminal Justice

PREFACE

This volume presents the results of a three year study of the impact of New York State's strict drug law enacted in 1973. The study was undertaken by the Joint Committee on New York Drug Law Evaluation, established by The Association of the Bar of the City of New York and the Drug Abuse Council, Inc.

An Executive Summary of the Report, presenting the Committee's conclusions, is also published by the Government Printing Office. A companion volume, *Staff Working Papers of the Drug Law Evaluation Project*, is available as well.

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The Joint Committee on New York Drug Law Evaluation and its staff are indebted to a great many individuals whose assistance made this study possible.

During the course of the Project, inquiries were made of legislators and their staffs, police officials, judges, prosecutors and defense attorneys, probation, parole and prison officials, and administrators of drug treatment programs and criminal justice agencies. At every turn, the Committee and its staff found the most cheerful and helpful cooperation.

Officials of the Federal government, and of state and local governments both within and outside New York State, were anxious to share their views and experiences concerning drug law enforcement, and often went to great trouble to meet numerous requests for data.

The Committee extends an enormous expression of thanks to the Drug Abuse Council for the financial support which made possible the organization of the Project and for the periodic counsel of its staff as the work progressed. The generous support of the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration made it possible for the Project to conduct a wide-ranging examination, and the Committee is extremely grateful for that support.

Hearty thanks are extended to the officers and staff of The Association of the Bar of the City of New York, in whose quarters the Project was housed. It would have been impossible to administer the Project effectively without the active assistance provided by the Association.

The Committee and its staff have benefited greatly from the advice of many experts in conducting their work and wish especially to thank the following individuals for their valuable contributions: Alfred Blumstein, Barbara Boland, Steven Brill, Donald T. Campbell, Samprit Chatterjee, Ruth Clark, Jacob Cohen, Paul Danaceau, Vincent Dole, Nathalie Friedman, David Greenberg, Pnina Grinberg, Bernard Gropper, Michael Grossman, Bertha Humez Hatvary, A.E. Jeffcoat, Robert Kasanof, Lee Konigsberg, Irving Lukoff, Mark H. Moore, Daniel Nagin, Robert Newman, Richard Parsons, Edward Preble, Benjamin Sackmary, Shlomo Shinnar, Nancy Spruill, James Q. Wilson, Franklin Zimring, and Norman Zinberg.

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Part One

CONCLUSIONS

Introduction

The 1973 Revision of the New York State Drug Law

In 1973, when the national "War on Drugs" was still fresh in mind, New York State radically revised its criminal law relating to illegal drug use. During the 1960s, the general policy of the State had been to divert low-level users of illegal drugs into drug treatment, and to invoke criminal penalties mostly against higher-level traffickers. By the early 1970s, it was commonly agreed that, as a device to limit illegal drug use and traffic, this approach had largely failed. In 1972, accidental narcotics deaths in New York State were six times what they had been in 1960. Thus, in 1973 the Governor and New York Legislature decided to try a new approach: the law was changed to prescribe severe and mandatory penalties for narcotic drug offenses at all levels and for the most serious offenses involving many other drugs.[1]

The new drug law of 1973 had two principal objectives. First, it sought to frighten drug users out of their habit and drug dealers out of their trade, and thus to reduce illegal drug use, or at least contain its spread. Second, it aimed to reduce crimes commonly associated with addiction, particularly robberies, burglaries, and theft. It was believed that some potential drug offenders would be deterred by the threat of the "get-tough" laws, while at the same time some hardened criminals would be put away for long periods, and thus be prevented from committing further crimes.

The new law became effective on September 1, 1973. It raised criminal penalties for the sale and possession of many controlled substances. Primary attention of the legislation was devoted to heroin, but other drugs were also included in the sweep of the statute. (The laws relating to marijuana were not substantively amended in 1973.)

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1. The 1973 drug law was enacted as Chapters 276, 277, 278, 676, and 1051 of the 1973 Laws of New York State. Significant subsequent amendments are contained in Chapters 785 and 832 of the 1975 Laws and Chapter 424 of the 1976 Laws. The major provisions of the 1973 law are summarized in the Appendix.

The statute divided heroin dealers into three groups within the highest felony category in the State, class A, and required minimum periods of imprisonment plus mandatory lifetime parole supervision for each group.

- Class A-I was defined to include the highest-level dealers, those who sell one ounce or more, or possess more than two ounces.[2] These dealers were subjected to the most severe penalty: a prison sentence of indefinite length, but with a minimum of between 15 and 25 years and a lifetime maximum.
- Class A-II was defined to include middle-level dealers, those who sell one-eighth of an ounce or more, or possess one or two ounces. These offenders were subjected to prison sentences of indefinite length, with a minimum term of between six and eight and one-third years, and a lifetime maximum.
- Class A-III was defined to include street-level dealers, also referred to as "sharer-pushers," those who sell less than one-eighth of an ounce or possess up to an ounce with the intent to sell. These dealers were made liable to prison sentences of indefinite length, with a minimum term of between one year and eight and one-third years, and a lifetime maximum.

There were two exceptions to the mandatory prison terms: the law permitted a discretionary sentence of lifetime probation without imprisonment for certain informants; and, in the case of youthful offenders between the ages of 16 and 18, an ambiguity in the law gave rise to discretionary exceptions.[3]

Classifications of offenses were established for other narcotics as well as for heroin, and for non-narcotic drugs, the classification for each drug being based upon its own weight standards. Penalties for drug felonies less serious than class A crimes were also increased. As a general result of these recategorizations, fewer drug offenses were punishable as misdemeanors.[4]

Further, the 1973 law prohibited any person who was indicted for a class A-III offense from pleading guilty instead to a lesser charge. Those charged with class A-I or A-II offenses could plead guilty to a class A-III felony, but no lower. The statute thus mandated that *any* person (other than a Youthful Offender or informant) indicted for selling heroin must, if convicted, go to prison for an indeterminate period, ranging from one year to life.

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2. These quantities refer to the gross weight of a substance containing heroin.

3. In 1975, the law was amended to remove the ambiguity, and discretion in sentencing was specifically permitted for offenders in this age group.

4. A felony is any crime punishable by more than one year in prison. A misdemeanor is one punishable by a jail term of up to one year.

The severity of the 1973 law was not limited to the mandatory sentences and restrictions on plea bargaining. Even if a person convicted of a class A drug felony were paroled after serving his minimum sentence, he would remain under the formal surveillance of parole officers for the rest of his life. The 1973 law also made some changes that were not limited to drug offenses; the most important of the changes reinstituted mandatory prison terms for persons who were convicted of a felony if they had been convicted of a felony in the past.[5]

The 1973 pattern of criminal regulation remained substantially intact until July 1976, when the stringent limitations on class A-III plea bargaining were abolished. That change significantly altered the 1973 scheme, despite the retention of severe mandatory penalties for the most serious drug offenses.

The Drug Law Evaluation Project

Shortly after the 1973 law went into effect, The Association of the Bar of the City of New York and the Drug Abuse Council jointly organized a Committee and research Project to collect data about the 1973 law in a systematic fashion and to evaluate the law's effectiveness. Would the "get-tough" law achieve the hoped-for results? Since New York was the only only state that had made this sharp change of policy, it provided a laboratory for study of the new approach. The Committee hoped that its study might not only provide guidance on problems of illegal drug use, but also be important as one of the few empirical evaluations that have been undertaken of the actual results of a legislative program designed to combat crime.

The objectives of the New York Drug Law Evaluation Project were:

- To ascertain what happened as a result of the 1973 drug law revision;
- To analyze, to the degree possible, why it happened; and
- To identify any general principles or specific lessons that can be derived from the New York experience and that can be helpful to New York or to other states as they wrestle with the problem of illegal drug use and related crime.

Since the New York Legislature significantly changed the 1973 drug law in 1976, the Project dealt with developments over the period September 1973-June 1976, when the 1973 law was in full force.

The work of the Project was conducted by a Committee and a professional staff. The Committee members, listed on page iii, represented a wide range of experience in medicine, law practice, prosecutorial work,

5. This stringent provision against recidivists had no application to persons convicted of a class A drug felony, since imprisonment was mandatory for these offenders even for a first conviction.

the judiciary, government, the police system, and academic analysis; the members were from New York State and other jurisdictions. Several disciplines were represented on the Project staff, including economics, public administration, criminology, statistical methodology, public policy analysis, and law.

Organization of the Project was made possible by an initial grant from the Drug Abuse Council. The major funding was provided by the National Institute of Law Enforcement and Criminal Justice, the research arm of the Law Enforcement Assistance Administration. Without this aid the Project would not have been possible.

In pursuit of the objectives of its study, the Project for three years systematically accumulated large quantities of data, conducted widespread interviews with knowledgeable persons, carried out extensive statistical analyses, and consulted scholars with relevant expertise. The range of the Project's inquiry was very wide. It included New York State agencies, courts at all levels, drug treatment authorities, prisons, police, prosecutors, and other sources of information that might enhance understanding of the operation and effect of the 1973 drug law.

The Project focused entirely on the effects of the 1973 revision. Thus it was beyond the scope of the Project to attempt to assess the causes of drug use, or to gauge the relative importance that should be given to medical-social versus criminal law approaches to the problem of non-medical use of dangerous drugs. Similarly, though the problems of the New York State criminal justice process are frequently referred to in this Report, the Project had neither the data nor the mandate to propose a comprehensive program for reforming the State's criminal justice system.

Following is a summary of the Committee's conclusions. The balance of the Committee's Report supplies detailed analysis and supporting data. In places, this Report treats New York City separately from the rest of the State because the scale of the City's problems of illegal drug use, crime, and court congestion is unique.

I

What Were the Effects of the 1973 Drug Law?

The available data indicate that despite expenditure of substantial resources neither of the objectives of the 1973 drug law was achieved. Neither heroin use nor drug-related crime declined in New York State.

Findings on Drug Use

New York City: ***Heroin use was as widespread in mid-1976 as it had been when the 1973 revision took effect, and ample supplies of the drug were available.***

The evidence suggests that heroin use had been declining for about two years before the law took effect and remained stable for at least a year thereafter. In 1975, there were nearly the same number of deaths from narcotics as there had been in 1973, and there was also a rise in the incidence of serum hepatitis (a disease often associated with heroin use). Further evidence of widespread heroin use is the sustained high level of admissions to ambulatory detoxification programs between 1974 and mid-1976. These programs typically attract the most active users.

Moreover, a large influx of Mexican heroin in 1975 and the overt marketing of "brand-name" heroin were signs of easy access to the drug. The absence of widespread price increases, together with stable or slightly rising consumption, was also evidence that large supplies were consistently available. Police officials and drug treatment administrators agreed that the heroin marketplace was as open in mid-1976 as at any time in their experience.

New York City: ***The pattern of stable heroin use between 1973 and mid-1976 was not appreciably different from the average pattern in other East Coast cities.***

Heroin use rose steadily in Washington, D.C. during 1974 and 1975 in contrast to the pattern of use in New York City. This comparison could be

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read to indicate that the 1973 drug law had produced a sustained inhibiting effect in New York. But patterns of heroin use in other East Coast cities (Baltimore and Philadelphia) were not significantly different from patterns in New York City, and therefore it is more likely that it was Washington's pattern that was unusual during this time period, not New York City's.

New York City and Other New York State Jurisdictions: ***The new law may have temporarily deterred heroin use.***

Enforcement and treatment program officials agree that heroin sellers temporarily became cautious and covert in the fall of 1973, when the new drug law first went into effect. There is also some slight numerical evidence suggesting that during 1974 the prospect of harsh criminal penalties may have temporarily induced some active heroin users in New York City to seek treatment in methadone programs. Admissions to such programs in New York City increased slightly during 1974, after a steady 15-month decline in 1972-73. But after 1974 they declined again.

New York State as a Whole and the Area of the State Excluding New York City: ***There is no evidence of a sustained reduction in heroin use after 1973.***

For the State as a whole, the pattern of heroin use from 1973 to mid-1976 was similar to that of other eastern states.

For the State excluding New York City, heroin use did not decline between 1973 and mid-1976. There were no reliable data from out-of-state jurisdictions with which to compare this result.

New York City: ***Most evidence suggests that the illegal use of drugs other than narcotics was more widespread in 1976 than in 1973, and that in this respect New York was not unique among East Coast cities.***

The illegal use of stimulants, barbiturates, tranquilizers, and sedatives — the so-called "soft" drugs — as well as cocaine was considerably more widespread than narcotics use. Some of these drugs pose a greater medical hazard to the user than narcotics.

Data for comparing changes in the extent of non-narcotic drug use in New York City to such changes in other East Coast cities are scarce and cover only the post-law period, precluding a comparative conclusion about the effects of the law on the use of these drugs in New York. Hospital emergency rooms reported that the number of patients treated for symptoms of non-narcotic drug use increased at least as much in New York City after 1973 as in Philadelphia and Washington, D.C.

Illicit use of methadone, a narcotic also widely dispensed legally in treatment programs, was considerably more extensive in New York than in

other East Coast cities, but did not follow the upward course of non-narcotic drugs. Judged by the frequency with which methadone was detected in hospital emergencies and in autopsies performed by the New York City Medical Examiner, unsupervised use of methadone declined between 1973 and mid-1976.

Findings on Crime

New York State: ***Serious property crime of the sort often associated with heroin users increased sharply between 1973 and 1975. The rise in New York was similar to increases in nearby states.***

For New York State as a whole, felonious property crimes — theft, robbery, and burglary — climbed 15% per year between 1973 and 1975. The average rise in Pennsylvania, Maryland, and New Jersey was 14%.

New York City: ***There was a sharp rise in non-drug felony crimes between 1973 and 1975. However, the rise was apparently unconnected with illegal narcotics use: non-drug felony crimes known to have been committed by narcotics users remained stable during that period.***

In New York City between 1973 and 1975, felonious property crimes rose 12% per year, much faster than the average increase of 7% in Washington, D.C., Philadelphia, and Baltimore.

However, the data indicate that of all non-drug felonies (i.e., felonies other than violation of the drug law itself) the *percentage* committed by narcotics users in New York City dropped steadily from 52% in 1971 to 28% in 1975. During the period 1973-1975, the *number* of crimes committed by narcotics users remained constant. Thus, while narcotics users still accounted for a large share of serious crime in New York City, it appears that the increase in crime during 1973-1975 was *not* related to narcotics use.

New York City: ***The available evidence suggests that the recidivist sentencing (predicate felony) provision of the 1973 law did not significantly deter prior felony offenders from committing additional crimes.***

The 1973 penal law revision contained a so-called "predicate felony" provision that prescribed mandatory State prison sentences for all persons convicted of a felony who had been convicted of a felony theretofore. Under this provision, furthermore, any person who had been convicted of a felony and who was indicted for a subsequent felony was prohibited from plea bargaining, that is, from pleading guilty to a misdemeanor. (Persons indicted for class A drug crimes were not subject to these general predicate felony provisions, since such persons faced mandatory imprisonment and

plea bargaining restrictions under the 1973 drug law even without being previously convicted felons.)

The predicate felony provision was intended to reduce recidivist crime in two ways: it was argued that the fear of automatic mandatory imprisonment would deter previously convicted felons from committing additional crime; and, if that failed, imprisonment itself would reduce crime by isolating from society a number of individuals who, if they remained at large, would probably commit additional crimes.

Between 1974 and mid-1976, over 5,100 repeat felony offenders were sentenced to State prison under the predicate felony provision. Of these, approximately 3,650 were from New York City.

In order to compare the criminal activity of convicted felony offenders before and after the 1973 predicate felony provision took effect, the Project examined the records of two parallel groups of convicted felony offenders. The first group consisted of 223 cases of persons who had been convicted of a felony during 1970 and 1971. The Project traced criminal records of these offenders for a two-year period ending August 1973, just prior to the effective date of the new predicate felony rule. The other group consisted of 220 cases of persons who had been convicted of a felony during 1972 and 1973, and their records were traced for a two-year period through August 1975; persons in the second group, unlike those in the first, faced mandatory prison sentences under the 1973 revision if they should again be convicted.[6]

Deterrence by Threat of Punishment

Comparative study of these two groups does not suggest that the new statute had the effect of deterrence by threat of punishment. The percentage of prior convicted felons who were arrested for a second felony during a two-year period after their earlier felony convictions proved to be exactly the same for the two groups studied—20%. Arrest alone does not establish guilt, of course, and these data may mainly attest to the consistency of the arrest practices of the police before and after the 1973 statute. But there is no reason to suppose that the quality of police arrests declined after the 1973 law went into effect, and therefore the likelihood is that these data reflect an underlying reality: namely, that the rate of

6. For statistical and other reasons, this study sample was limited to offenders who were convicted of non-drug felonies. Further, the study sample necessarily excluded offenders imprisoned after their first conviction, since few such persons were soon at large again and thus able to be repeat offenders. Limiting the sample to those not imprisoned may have biased the results, but if so, the bias was probably in the direction of eliminating from the sample the most hardened criminals — those individuals most likely to have been imprisoned after a subsequent conviction even under the old law, and least likely to be deterred from future crime by the new law.

recidivism was the same before and after the effective date of the 1973 predicate felony provision.

Deterrence Through Incarceration

There is also little evidence to indicate that the predicate felony provision had a deterrent effect by increasing the number of prison sentences imposed upon repeat felony offenders.

Under the 1973 predicate felony provision there was an increase in the proportion of convicted repeat felony offenders who were sentenced to prison. Out of a sample of 26 repeat offenders who were convicted under the old law, 58% were sentenced to State prison. The corresponding figure under the new law was 76% (19 prison sentences out of 26 convictions in the sample). At the same time, however, as appears more fully below (pp. 22-24), there was a decline in the proportion of *arrested* repeat felony offenders who were sentenced to prison. Given that decline, the only way by which there could have been an increase in the total number of imprisonments of repeat felony offenders was by a dramatic increase in the total number of arrests of prior offenders. The Project estimates that it would have been necessary for arrests of prior offenders to increase by 50% from 1971-73 to 1974-76 to produce that effect. There are no direct data available on total arrests of prior offenders to bring to bear on the question; but the fact that total arrests of all persons for non-drug felonies in New York City increased by only 10% between those two periods makes it highly improbable that the arrest rate of prior felony offenders could have increased by such a large amount.

Findings on Other Results of the 1973 Law

Measured in Dollars, the Experiment of the 1973 Law Was Expensive.

It was recognized from the beginning that the approach taken in 1973 would require additional judges, and 49 of them were added to deal with the expected increased workload. Thirty-one of the new judges were allocated to New York City — constituting over one-third of the total Supreme Court capacity available in the City to administer *all* felony laws. The judges, prosecutors, defense counsel, and support staff established specifically to deal with the 1973 law cost the State $76 million between September 1973 and mid-1976. Not all of this $76 million was spent on drug law cases, for the new resources were used for other cases as well. A reasonable estimate is that approximately $32 million was spent in the effort to enforce and implement the 1973 drug law.

Some of the Fears Voiced by Critics of the 1973 Law Were Not Realized.

Some critics of the 1973 law argued that it would jail many young people. This did not occur. The number of 16 to 18-year-olds incarcerated

each year for drug law offenses declined.[7] Moreover, the exercise of sentencing discretion permitted by law for Youthful Offenders meant that for the 16 to 18-year-olds who were convicted the risk of a prison or jail sentence was less under the new law than under the old.[8] Nor did the total number of first offenders incarcerated increase under the 1973 law, even though a higher percentage of offenders convicted of a felony for the first time did go to prison or jail.

Some police officials and prosecutors predicted that the new drug law would inhibit the recruitment of informants, who are of great importance to successful drug prosecutions. On the contrary, law enforcement officials agree that under the 1973 law there were more informants than before at all levels of the drug distribution system.

Some analysts predicted that the 1973 drug law would cause the prisons to overflow. In fact, drug law sentences under the 1973 law did not constitute a significantly larger fraction of annual new commitments to State prisons than in the past; they accounted for 13% of all commitments in 1972 and 1973 and for 16% in the first nine months of 1976. The population of the State prison system did indeed increase rapidly, from 12,845 at the end of June 1973 to 16,074 at the end of 1975 and further to 17,108 at the end of June 1976. But offenders in prison as a result of drug felonies accounted for only 11% of the June 1973 population and still accounted for only 11% of the December 1975 population. (Information for 1976 was not available.) The proportion of drug offenders in prison may increase in the future as the courts catch up on their backlog of class A cases (see below, pp. 17-18) and as drug offenders spend longer terms in prison as a result of the heavier penalties prescribed by the 1973 law. There will be, however, an offsetting factor—a smaller number of commitments in class A-III cases as a result of the 1976 amendment to the law.

7. Although police officers in New York City occasionally noted contact with very young people in the heroin distribution system, there was no great increase in arrests of youths under the new drug law.

8. All offenders incarcerated for terms of more than one year are sent to State prisons. Offenders incarcerated for periods of up to one year are sent to local jails.

II

What Accounts for the Disappointing Results of the 1973 Drug Law?

The premise of the 1973 drug law was that severe mandatory sentences can significantly deter illegal drug use and traffic. In fact, however, severe difficulties of administration prevented a complete test of this premise. For such a law to be an effective deterrent, it had to be effectively enforced and the threat of the law's sanctions had to be clearly perceived by drug users and traffickers as an ever-present reality. Apparently, however, most offenders and would-be offenders never felt the full threat of the law.

The Criminal Justice Process as a Whole did not Increase the Threat to the Offender.[9]

Mandatory sentencing laws directly affect only an end product of a long criminal justice process — the convicted offender. Under the 1973 law, a higher percentage of offenders convicted in superior courts were incarcerated and for longer periods of time than in the past. But the criminal justice process from felony arrest to felony conviction has many steps, and actions at each step combine to determine the ultimate deterrent power of the law. Few cases make it all the way through the process. The steps are:

Arrest

Drug law offenders have always enjoyed extremely low odds of being arrested for any single offense. That low risk of arrest apparently did not increase under the 1973 law.

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9. The discussion in this section concerns the drug crime provisions of the 1973 law. Further discussion of the predicate felony provision can be found below, p. 22.

In New York City, the police had always been in a position to make large numbers of street level arrests for drug (especially narcotics) offenses. It was not the policy of the Police Department to do so, however. The Department had been disappointed with past efforts at mass arrests because they were very expensive and did not appear to hamper the narcotics trade. The 1973 law did not produce a change in arrest policy, in part because of that experience, and in part because the Department believed that the courts would be unable to manage the workload that a mass arrest policy would produce. (On this point, the data collected by the Project support the Department's view.)

Outside New York City, drug markets were not as open and widespread, and therefore the police could not increase arrests as easily.

Bail

Although the traditional purpose of bail is to ensure appearance of defendants at court hearings, release on bail is unfortunately seen by the public (and possibly also by law violators) as diluting the threat of penal sanctions. The 1973 law did not change bail practices, and the evidence is that they were in fact substantially the same in drug felony cases under the new as under the old law.

The diluting effect of immediate bail release might not be great if cases were promptly and speedily processed. But the slow handling of drug law cases reinforced the impression that the law was not being, or could not be, enforced.

Indictment

Of all drug felony arrests under the old drug law in 1972 and 1973, 61% were disposed of in preliminary proceedings, and only 39% resulted in an indictment. By the first half of 1976, only 25% of arrests resulted in an indictment.

The decline from 39% to 25% should not be attributed to the 1973 law. First, there was a comparable decline in the frequency with which non-drug felony arrests resulted in indictments. Second, it was only *after* an indictment had been returned by a grand jury that a defendant fell under the plea bargaining restrictions of the 1973 law. Although it would have been possible for prosecutors to react to the plea bargaining restrictions by bargaining with arrestees *before* indictment—as some people had predicted—in general it appears that prosecutors did not follow that course.[10]

10. During early 1976, just prior to enactment of the amendment relaxing plea bargaining restrictions, the Special Narcotics Prosecutor in Manhattan did begin to offer misdemeanor pleas prior to indictment in some class A-III cases, provided prison sentences of at least six months were imposed.

Conviction

Convictions as a Percentage of Indictments

For reasons unknown, there was a slight decline under the 1973 law in the frequency with which convictions were obtained after an indictment. Convictions fell from 86% of dispositions in 1972 to 80% in early 1976 (the conviction rate in non-drug felony cases continuing virtually unchanged during this period).[11] Thus, only one-fifth of those originally arrested in 1976 for drug felonies were ultimately convicted (80% of the 25% indicted), a decline from roughly one-third under the old law.

Total Convictions

The total number of convictions for drug offenses in felony courts in the period 1974 to mid-1976 was lower than would have been expected during the same period under old law disposition patterns.

The slowdown in the criminal justice process that will be described below led to a decrease of 900 in the number of persons convicted during 1974-76 as compared with the number who might have been convicted under the old law. There were a total of 5,800 convictions for new law drug offenses in the State's superior courts between 1974 and mid-1976. The shortfall of convictions occurred during 1974, when the courts disposed of only two-thirds of the drug law indictments returned. During 1975 and the first half of 1976, the courts kept up with the new indictments returned, but in New York City they were not able to reduce the backlog accumulated during 1974. Courts in other parts of the State were generally successful in cutting into their pending caseload during 1975 and 1976.

Prison Terms

Incarceration became more likely for those ultimately convicted, and between 1974 and June 1976, 2,551 new law drug offenders were sentenced to either State prison or local jail after a superior court conviction. During 1972 and 1973, 33% of persons convicted of drug crimes in the State's superior courts received either State prison or local jail terms. By the first half of 1976, that percentage had grown to 55%, a direct result of the plea bargaining restrictions and mandatory sentencing provisions of the 1973 law.[12,13] This change of 22% was a major increase, but it was barely enough

11. The decline was not due to a lower conviction rate among cases decided by a jury.

12. For the 1974-June 1976 period as a whole, the percentage was 44%. If the percentage of convicted offenders incarcerated during this period had continued at its old law value of 33%, then 637 fewer drug offenders would have been incarcerated.

13. One reason the incarceration percentage did not approach 100% is that about half of the post-1973 convictions were in lower class felony cases which did not fall under the mandatory sentencing provisions that governed class A cases; in cases below the class A level, there was a *decline* in prison sentences as a percentage of convictions, from 32% to 21%.

to offset the decline from 1974 to mid-1976 in the likelihood of ever being convicted.

In sum, a defendant arrested for a drug felony under the old law faced an 11% chance of receiving a prison or jail sentence in superior court; under the 1973 law, the chance was an identical 11%.

If indictment and conviction rates had not fallen, then the rise in the ratio of incarceration to conviction that did occur would have increased an arrestee's risk of incarceration from 11% to 18%. That was the maximum effect on risk which the mandatory sentencing provision could have provided. It is impossible to say whether an increase of that magnitude would have generated a perceived threat great enough to deter any potential offenders from illegal drug trafficking, or, if so, how many.

Prison for Class A Offenders

Over 80% of persons convicted of class A felonies under the 1973 drug law were sent to prison, compared to 66% of offenders convicted of similar crimes and sentenced to prison or jail under the old law between 1972 and 1974. The other 20% of class A offenders received discretionary non-prison sentences because they were either informants or between the ages of 16 and 18.

Punishment

Punishment became more severe under the 1973 law. Drug law offenders sentenced to prison under the 1973 law would spend more time there than they would have under the old law. Between 1972 and 1974 under the old law, only three percent of those convicted and sentenced to prison for drug felonies received a minimum sentence of more than three years. During 1974 and 1975, when the new law was in effect, 22% received minimum sentences of more than three years.

Under the old drug law, lifetime prison sentences had been extremely rare: they were imposed only in cases involving large amounts of drugs. By contrast, some 1,777 persons convicted under the new drug law were sentenced to lifetime terms (imprisonment plus parole) between September 1973 and June 1976.

As a result of these developments, some of which worked to limit the impact of the 1973 drug law, only the relatively small number of drug felons who were convicted encountered the real difference between the old drug law and the new—a more likely and longer prison sentence. Drug traffickers as a group were not likely to see the new law as a serious threat.

The short disruption in the heroin trade that did occur—possibly because of the State's extensive publicity about the new law—suggests that

if the actual threat of the law had matched the threat conveyed by the publicity, a stronger deterrent to drug use would have been achieved. Unfortunately, it is not clear what level of enforcement would have been necessary to bring about that deterrent, or whether it could have been achieved at reasonable cost and with reasonable protection for individual rights.

In New York City, the Time Required to Process Drug Law Cases Lengthened Dramatically.

The threat of the 1973 drug law suffered further dilution through the large increase in the average time required to dispose of a drug law case in the New York City Supreme Court. Between 1973 and 1976 that time nearly doubled, although there was no similar increase for other felony cases. By mid-1976 half the drug law cases then being disposed of were over one year old and the backlog had increased to over 2,600 pending cases, nearly a year's workload for the courts. This had occurred in spite of the addition of 31 new courts in New York City.

Two factors contributed to the slow-down. First, the demand for trials rose sharply. Under the old law during 1972 and 1973, only 6% of all drug indictments in New York City had been disposed of by trial. Under the 1973 law, trials rose to 16% of dispositions. Trials in non-drug cases also increased during this period, but rose only from 6% to 12% of all dispositions. A trial took up to ten to fifteen times as long to complete as a non-trial disposition.

The reason for the increase in trials lay in the 1973 law's combination of mandatory prison sentences and restrictions on plea bargaining. Since defendants in class A-III cases were forbidden to plead guilty to a lower charge, they had a major incentive to demand a trial rather than simply to plead guilty. Class A-III indictments accounted for 41% of all class A drug law indictments in New York City and 61% of the class A trial workload during the period 1974-June 1976, and thus contributed heavily to the City's court congestion.

Second, the productivity of the new courts created under the 1973 drug law failed to match that of established courts.[14] Between 1974 and 1976, the average case in the new courts required 21 court appearances, compared with between 10 and 15 appearances for cases disposed of in other courts. If the new courts had matched the productivity of the established courts, there would have been no more than a small growth in the drug felony backlog.

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14. Productivity, as used here, is measured by the number of dispositions for each day a court is in session.

Contributing to the low productivity of the new courts was the fact that even in drug law cases which did not result in a trial, defense counsel typically posed many challenges and objections in the process of entering a guilty plea. This was to seek dismissal or to defer for as long as possible the start of the defendant's mandatory prison sentence and the lifetime parole supervision that would follow.

Court Delays Reduced the Threat of the New Law.

As a result of delays in processing new law cases—delays which were most pronounced in New York City—fewer drug law cases were disposed of between 1974 and June 1976 than during a similar period of time under the old drug law. The State's felony courts imposed 2,551 sentences of incarceration in new law drug cases between early 1974 and mid-1976—about 700 fewer than would have been expected under the old law, or between 200 and 300 fewer per year.[15] This was true even though the chances of incarceration after conviction rose considerably, as noted above.

The threat embodied in the words of the law proved to have teeth for relatively few offenders.

If ways had been found to counteract administrative problems, and if the backlogs had not materialized, the new drug law would have led to approximately 560 more prison and jail sentences each year across the State than under the pre-1973 law.[16] This would have meant an increase of about 36% over the 1,500 drug law sentences imposed in 1973. There is no way to judge whether an increase of that scale would have been enough to cause a significant drop in illegal drug use and crime.

Within the State's Criminal Justice System, There Was Little Enthusiasm for the 1973 Drug Law.

Although there is no evidence that police officers, prosecutors, and judges were derelict in carrying out the 1973 drug law, it is nonetheless evident that there was very little enthusiasm among these groups for it. It is impossible to gauge the effects of this dim view, but it probably did contribute to the disappointing outcome of the 1973 revision.

Many judges and prosecutors felt that the mandatory sentencing

15. These estimates are derived by "allowing" the courts to dispose of nearly all new drug indictments, as they did during 1972 and 1973, and then by applying the old law conviction rate (86%) and the old law imprisonment rate (33%) to the resulting dispositions.

16. This estimate is derived by "allowing" the courts to dispose of nearly all new drug indictments, and then by applying the actual conviction rate (80%) and the actual imprisonment percentage (55%) to the resulting dispositions.

provisions reduced the possibility of individual treatment of offenders, and, therefore, the quality of justice. Some were troubled because the penalties imposed on low-level drug traffickers were more severe than those applicable to crimes that most citizens consider heinous. Some judges have suggested that, reluctant to imprison offenders whom they considered prime candidates for rehabilitation programs, they granted continuances more readily than usual, thus slowing down the process of judicial disposition.

New York City prosecutors tended to believe that the 1973 law was forcing them to scatter their limited resources on what they considered relatively minor offenses. And the judges, worrying about other criminal backlogs that had built up before 1973, urged that the new drug courts be allowed to work on non-drug cases. In 1974, despite the increasing backlog of drug law cases, approximately 1,000 non-drug cases were assigned to the new courts in Manhattan, and in early 1975 the courts prevailed upon the Governor to relax the administrative distinction between the old and the new courts so that the former drug courts could be used regularly for non-drug cases.

As for the police, the New York City Police Department believed that a policy of all-out street level enforcement would be only marginally productive and would hopelessly inundate the courts.

Experience Outside New York City

Courts outside New York City were generally able to handle cases under the 1973 law without bogging down; they had fewer serious drug cases on their dockets, and 18 new drug law courts shared the work. However, most of these courts still had trouble processing the more serious drug cases, and the pace of disposition in drug law cases did not improve.

The following sections summarize the effects of the 1973 law in the State's five largest counties outside New York City. Together, Erie, Monroe, Nassau, Suffolk, and Westchester counties included half the State's population and accounted for roughly half of the State's felony drug arrests outside the City.

Prison and jail sentences in drug cases went up dramatically in several counties; yet in none of them was there evidence of a sustained drop in the extent of drug use. Officials in each county did report a marked retrenchment of the heroin market at about the time the 1973 law became effective, apparently signaling apprehension over the law among heroin dealers. According to limited statistical evidence, however, this market reaction did not persist for long.

Erie County

Erie County presents a good example of efficient administration of the 1973 drug law. Arrests for drug felonies increased sharply after the law went into effect. There was also a rise in drug felony indictments, contrasting to the decline in New York City. Convictions increased both in number and as a proportion of drug indictments, as dismissals of such indictments fell. There was a fivefold increase in the number of drug offenders sentenced to prison or jail between 1973 and the first half of 1976. The risk of incarceration also rose for those arrested for drug offenses, although by mid-1976 it was still no higher than the statewide average.

These improvements in criminal justice system performance can be attributed to an increased emphasis on drug law enforcement and prosecution, and to the efficient use of the three new court parts opened in Erie to implement the 1973 law. One reason for the lack of persistent delays in the courts is that the demand for trials in drug cases did not increase, as it did in most other parts of the State. The chief reason for this surprising result is that defendants in class A-III cases were offered prison sentences with short minimum terms in exchange for guilty pleas.

And yet, in spite of this efficient implementation of the drug law, there was no evidence of a sustained decrease in the use or availability of heroin in Erie County. Administrators of drug treatment programs and enforcement officials believed, however, that they had noted a decrease in heroin use for six months to a year following implementation of the law, and some support for this view can be drawn from the records of narcotics deaths and serum hepatitis. Perhaps for a longer time than was evident in New York City, heroin dealing was driven "underground" and users became more secretive about their habits. However, the decline in use did not persist, and the evidence is that heroin was as prevalent in Erie County during the first half of 1976 as before the law took effect.

Monroe County

The criminal justice system in Monroe County met with moderate success in its efforts to implement the 1973 drug law. Arrests, indictments, convictions, and prison sentences for drug offenses all rose sharply after 1973. This stepped-up enforcement of the drug laws in Monroe appears to be attributable both to the passage of the 1973 law and to the establishment of an interagency Drug Enforcement Task Force, which included representatives from Federal, State, and local police forces.

In contrast to the courts in Erie County, however, Monroe County courts had some difficulty in keeping up with the processing of the most serious drug law cases. The number of trials in class A drug cases rose considerably, and fewer than half were disposed of during the first two

years the law was in effect. Although these delays softened the potential impact of the 1973 law, local officials believed that the law had affected the patterns of heroin trafficking by causing dealers to conduct transactions less openly. At about the same time the new law went into effect, dealers appeared to be selling smaller amounts of heroin in each transaction in order to avoid a class A-I or class A-II arrest, and sales to unknown purchasers were rare.

Nonetheless, observers reported that the reductions in heroin use caused by these new patterns had not been large enough to have a lasting impact on the extent of use in the County. Narcotics deaths and serum hepatitis both increased after 1973.

Westchester County

Criminal justice officials in Westchester County reported that implementation of the 1973 law proceeded smoothly. In 1976 it still took much longer to process drug cases there than in Erie and Monroe counties, but a marked improvement in case processing had occurred since 1973. Like Erie County, Westchester saw prison and jail sentences in drug cases rise substantially under the new law, from 34 in 1973 and 1974 to 60 in 1975 and 75 in 1976. Even so, it was not until 1976 that the number of sentences exceeded the number during 1972. The number of drug indictments and convictions did not increase in Westchester; prison and jail sentences went up solely as a result of the increased severity in penalties.

Changes in heroin use patterns in Westchester appear to have paralleled the changes evident in Erie County. Limited data tend to confirm the observation of officials in Westchester that a brief dislocation of the heroin market soon after the law became effective was not sustained long enough to have a lasting effect on trafficking or use.

Nassau County

Like its neighbor, New York City, Nassau County had difficulties in implementing the 1973 law.

Up to September 1975, only one-fifth of all class A indictments had been disposed of. The major factor in these delays was apparently the large number of young people accused of class A-III offenses. Many class A-III cases were held open by the courts until the Legislature, in 1975, exempted 16 to 18-year-olds from mandatory prison sentences. In addition, a large number of class A-III offenders were sentenced to probation as informants, and cases involving informants reportedly took extended periods of time to resolve. Trials did not increase markedly in Nassau, as they did in most other jurisdictions.

As a result of these factors, the number of prison and jail sentences

imposed on drug offenders fell during 1974 and 1975. After the end of 1975, however, the courts succeeded in stabilizing the backlog of class A cases, and prison and jail sentences for drug offenses began to return to their pre-law level.

Drug use patterns were particularly difficult to isolate in Nassau, which has none of the urban centers in which drug use is usually concentrated. Local officials reported that the most troublesome problems of illicit drug use were recent rises in the use of cocaine, and an increased prevalence of poly-drug use. They also reported that there had been no measurable decline in heroin trafficking or use in Nassau County since enactment of the 1973 law, an observation which the available indicators of narcotics use tend to confirm.

Suffolk County

Suffolk County too had difficulty in implementing the 1973 law. The 1973 law generated an increased demand for trials in drug cases during 1974 and 1975, when the County's superior court was experiencing a trial backlog in other cases as well. A substantial proportion of drug indictments filed were for class A cases, and defendants in these cases sought to delay disposition by obtaining continuances and by pressing motions to limit evidence. The general press of court activity provided a context in which these efforts were largely successful.

The addition of three superior court parts in early 1976 greatly alleviated the congestion of the court system. In addition, the 1976 amendment to the law, relaxing plea bargaining restrictions in class A-III cases, aided the disposition of drug cases by plea. Hence, the felony drug case backlog was reduced and a significantly increased number of trials held.

No notable decline in heroin use was detected in Suffolk County after 1973. Officials noted that there had been a recent rise in the use of barbiturates and cocaine, and that a form of poly-drug use involving alcohol, marijuana, and barbiturates was the most common drug problem in the County.

New York City: Despite the Introduction of Mandatory Prison Sentences for Repeat Felony Offenders, for Any Felony Offender Arrested for a Subsequent Felony the Risk of Imprisonment Was Lower After the 1973 Revision Than It Had Been Before the Law Was Enacted.

As noted earlier, the 1973 predicate felony provision had the effect of increasing substantially the percentage of convicted repeat offenders who were sentenced to prison. At the same time, however, though it may appear anomalous, the risk of imprisonment facing a newly arrested prior felony

offender declined. This was the result of the fact that although convicted repeat offenders faced a higher chance of incarceration if they were convicted following the effective date of the 1973 predicate felony provision, that rise was more than offset by the decreasing likelihood that arrest would lead to indictment and indictment to conviction.

A key fact to be borne in mind is that even before the predicate felony provision went into effect, persons convicted of a felony in New York City were usually sentenced to State prison if they had been previously convicted of a felony—the figures being between 50% and 60%.[17] Furthermore, the rate of prison sentencing in New York City rose in the early 1970s independently of the 1973 provision; thus, in 1971 only 28% of all convicted non-drug offenders (including first offenders) received prison sentences, but in the first half of 1976 46% of all convicted non-drug offenders (including first offenders) received prison sentences. Accordingly, it is evident that the rate of imprisonment of repeat offenders would have risen during the period in question even in the absence of the 1973 revision.

Nonetheless, the 1973 predicate felony provision did have an affirmative effect in that it increased the rate of imprisonment of convicted repeat offenders. Out of a sample of 26 repeat offenders who were convicted under the old law, 58% were sentenced to State prison; the corresponding figure under the new law was 76% (19 prison sentences out of 25 convictions in the sample).

But offsetting this rise in the imprisonment rate was the fact that in New York City indictment was less likely to follow the arrest of a repeat felony offender after the 1973 law than it had been before. Study of a small sample of arrests of prior non-drug felony offenders indicated that under the old law, between 1971 and 1973, 40% of such arrests led to felony indictments (there were 78 arrests in the sample); whereas under the new law only 24% of the arrests led to a felony indictment (there were 146 arrests in the sample). (Similarly, there was a decline in indictments as a percentage of arrests in the case of defendants who did not have prior convictions.)

In addition, during this period there was a decline in convictions as a percentage of indictments of prior felony offenders. Under the old law, 90% of such offenders who were indicted were convicted (28 out of 31 indictments in the sample); under the new law during the time in question, only 71% of such indictments resulted in conviction (25 out of 35 indictments). The reasons for this decline are unknown; it may be

17. The percentage was about 85% for persons who were convicted of a felony and who had earlier been *imprisoned* for commission of a felony.

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observed, however, that the conviction rate for first-time offenders in non-drug cases also declined during this period, though to a slightly lesser degree.

The combined effects of the higher rate of imprisonment after conviction and the lower likelihood of indictment and conviction after arrest yielded the following results: under the old law, 20% of the arrests in the sample eventually resulted in a sentence to State prison; under the 1973 predicate felony provision, only 13% of arrests of prior felony offenders ultimately resulted in a sentence to State prison (19 sentences out of 146 arrests in the Project's sample).[18]

As noted above, an estimate of the increase in arrests of prior felony offenders that would have been necessary to offset this reduction in the risk of imprisonment suggests that the total number of repeat offenders imprisoned under the predicate felony provision between 1974 and mid-1976 was less than the number imprisoned in the two and one-half year period immediately preceding the effective date of the new law.

An unexpected anomaly encountered by the Project was that, as actually administered, the 1973 predicate felony provision did not invariably result in imprisonment for the convicted repeat felony offender. In the course of review of 25 repeat felony offender cases, the Project's research identified six instances between 1973 and 1975 in which convicted repeat felony offenders did *not* in fact receive prison sentences upon repeat conviction. In five of these cases, information on the offender's previous conviction seems not to have been in the file that came to the judge, prosecutor, and probation department at the time of sentencing. If such procedural or administrative lapses occurred with significant frequency, they can only have contributed to reduce the threat of punishment that was originally anticipated from the predicate felony provision.

18. The point of this section may also be stated in reverse, i.e., that the rise in the ratio of imprisonment to conviction (58% to 76%) served to offset the declines in indictment and conviction rates, which might have occurred even in the absence of the predicate felony provision. If it were to be assumed that in the absence of the predicate felony provision only 58% of convicted repeat felony offenders would have been sentenced to prison between 1974 and mid-1976, then it is estimated that approximately 300 fewer repeat felony offenders would have been imprisoned each year in New York City under the old law than were in fact sentenced to prison under the predicate felony provision.

III

Observations and Lessons for the Future

The Difficulties of Implementation

Court Congestion

New York City suffered from heavy congestion of its court system prior to the enactment of the 1973 law. In any state or city suffering from similar court congestion, it would make little difference whether laws like New York's were passed or not. If enacted, such statutes would be likely to founder in the implementation process; the major result would probably be an increase in the amount of money spent. It is possible that a community with a smoothly functioning criminal justice process might find a drug law like the 1973 law to be effective, but the limited evidence from Erie County, and to some extent from Monroe and Westchester counties, is not encouraging.

The key lesson to be drawn from the experience with the 1973 drug law is that passing a new law is not enough. What criminal statutes say matters a great deal, but the efficiency, morale, and capacity of the criminal justice system is even more of a factor in determining whether the law is effectively implemented.

Whatever hope there is that statutes like the 1973 revision can deter anti-social behavior must rest upon swift and sure enforcement and a dramatic increase in the odds that violators will in fact be punished. Until New York's criminal justice process is reformed so that it can do its work with reasonable speed and reasonable certainty, the Legislature does not in reality have serious policy options to choose from. Without implementation there is no policy; there are only words.

The 1973 law not having been fully implemented in New York State as a whole, it is not possible to conclude from the New York experience what

the consequences of that law would have been if it had been fully implemented.

Other Administrative Problems

Police, courts, and prosecutors alike saw the law as a new drain on resources which in their view were already inadequate. But court congestion was not reduced even after the application of large amounts of new resources.

The addition of 31 judges avoided any diversion of existing resources to drug cases, but existing pressures on the courts made it difficult to absorb the new judges and other personnel productively. These additions were made to the court system without producing additional dispositions, and there is no assurance that a larger number of judges would have made the implementation process any more effective.

It was apparently not a scarcity of resources which was to blame for the administrative difficulties the 1973 law encountered. A portion of the new resources was required because — partly as a result of a rise in trials—new law drug cases took significantly more court time than drug cases under the old law (1.7 court days for each disposition compared to 1.0 court days under the old law, statewide). The balance was absorbed in the adjudication of non-drug cases, providing a substantial benefit to the court system as a whole.

Another indication that a shortage of judges was not the primary problem facing the courts came from the growth of the New York City Supreme Court system as a whole. In early 1972, there were 50 courts operating in criminal matters; by 1975, there were 117 courts in operation. There were 21,900 indictments disposed of in each of those years. And between late 1973, when new judges were furnished to implement the drug law, and the first half of 1976, processing times in the courts lengthened.

Cost

The cost of court resources furnished to administer the 1973 law was high, although, as it developed, only a portion of those resources was actually needed to process new law cases. Rigorous enforcement of similar statutes in other jurisdictions, if possible at all, might require large expenditures not only for judges but for police and defense and prosecutorial staffs. If long prison sentences were to be legislatively mandated or judicially imposed in large numbers, still further costs would be incurred to build, maintain, and staff new correctional facilities.

The New York experience suggests that it would not be wise for other jurisdictions to undertake such large expenditures unless the outlook for successful implementation were favorable. It is unlikely that the deficiencies of an existing criminal justice system can be overcome solely by the simultaneous application of tough laws and additional resources.

What Could Have Been Done to Improve Implementation?

Restricting the New Courts to Drug Cases

Administration of the 1973 law in New York City might have been marginally improved if all the resources supplied to the courts had been used for drug law cases. Some resource diversion occurred because without it courts would have been idle while waiting for new cases; but if the courts had been dedicated solely to new law cases early in the implementation process, when the backlogs were building up most quickly, additional pressures might have been applied to avoid idle courts and to speed the disposition process.

Efficiency in court operation could have been improved by reducing the number of appearances and processing times; management improvements can raise the courts' productivity to some extent. But it is unlikely that such improvements could have been achieved in time to make a significant contribution to administration of the 1973 law.

Altering the Penalties

Another possible approach would have been to mitigate the severity of the penalties. There is little agreement today about the degree to which any specific penalty structure can function as an effective deterrent to crime. However, changes in the penalty provisions of the 1973 law would have eased administrative burdens and made it somewhat easier to test the proposition that a system of mandatory sentences, however specified, can be an effective deterrent. Their deterrent effects will never be known unless the sentences in fact can be and are imposed.

As an example of an alternative approach, the legislators' goal of increasing the risk of punishment through prescribed prison sentences could have been approached without the extremely long indeterminate sentences embodied in the 1973 law. It would have been possible, for instance, to create mandatory prison terms in which the indeterminate period was for a short time, such as one to three years instead of one year to life. Another alternative would have been to impose a mandatory one-year sentence in a local jail. Prison terms of definite length could also have been prescribed, but with departures allowed if the judge stated in writing his reasons for imposing an alternative sentence.

Adoption of any of these approaches for drug cases would have reduced the demands for trials and the resulting drain on judicial resources. Such penalties would also have fitted in more reasonably with penalties imposed for crimes of violence.

Easing the Plea Bargaining Restrictions

The 1976 amendment to the New York drug law made a much-needed

change in the existing law when it changed the plea bargaining restrictions to allow persons charged with class A-III narcotics felonies to plead guilty to a lower charge.

Experience under the 1976 revision should be watched carefully. It may enhance the deterrent power of the law by causing penalties to follow swiftly upon indictment and conviction for low-level drug defendants. (If added deterrence is to occur, jail terms of reasonable duration must still accompany the speedier disposition.) Such a speed-up in processing, by releasing court resources for other cases, should also cause improvement in processing cases involving the more serious drug offenses.

Possibilities for Future Improvement

Neighborhood Protection

An additional opportunity was opened up by the 1976 amendment. The painfully visible traffic of drugs on the street has always been largely made up of class A-III offenders. So long as persons charged with class A-III felonies were not allowed to plead guilty to a lower charge, massive street arrests of these offenders would have led inevitably to equally massive court congestion. Now, however, the police and prosecuting authorities in New York City are in a position to change their enforcement policy. With the 1976 amendment, the police can bring regular and reasonable pressure on notorious market areas and confront small dealers and purchasers with a heightened risk at the "front end" of the criminal justice process. Such a widened scope of minor arrest practice is not likely to have a substantial effect on the drug market or the drug supply. But a police arrest policy that ignores an open illegal marketplace has the unfortunate by-product of appearing to condone well-established criminal activity, to the desperation and helpless rage of the innocent citizens who live and work in the neighborhood. Police should not allow local conditions to deteriorate to the point where there is little appearance of civil order, where the neighborhood seems to have been abandoned, and where its citizens finally demand that the police "sweep the streets." With the 1976 amendment, the police are now in a position to forestall that chain of events without hopelessly flooding the prosecutorial and judicial system.

Predicate Felony Administration

Administration of the predicate felony provision of the 1973 law could be improved if courts required prosecutors to find out at the beginning of the court process whether or not a defendant had a previous felony conviction. Prosecutors would then know the bargaining latitude available to them.

At present, the records of past convictions available to prosecutors are

sometimes incomplete, and past convictions may be overlooked, as they have been on occasion. For a modest investment—perhaps the cost of one court part in New York City—the necessary records could be brought up to date as soon as a new felony arrest is made. This should be done.

Reevaluation of the Relationship between Narcotics Use and Non-drug Crime

In the years 1971 to 1975, the percentage of non-drug felonies committed by narcotics users dropped steadily in New York City. Efforts should be made by other cities and states to obtain comparable data. A major impetus behind the adoption of the 1973 revision was the widespread belief that narcotics use, or at least narcotics addiction, is a primary cause of other felonies. If narcotics users are found to be responsible for less and less crime, or if it is prohibitively expensive to attempt to enforce "get tough" drug laws, then the limited resources available to fight crime might be better employed in directions other than an escalated assault on the narcotics trade.

Research

We are just entering the era in which social science research can begin to be of real help in designing our criminal law system. Control of crime, including illegal drug use, is a field in which additional social science research is both feasible and promising.

After decades of debate, there is still little evidence about the extent to which the use of narcotics or other drugs actually causes users to commit crime. Moreover, it is not known what proportion of crimes committed by drug users would have been committed by the same persons in the absence of drug use. New knowledge on this topic would bear directly upon the choices of public policy to be followed to combat crime and the illegal use of drugs.

Similarly, there is little systematic information about the share of serious crime that is committed by recidivists. If most crime is committed by career criminals, then there is greater justification for harsh sentencing policies, since incarceration can prevent crime by isolating those who commit most of it, and since few of those sent to prison would be low-risk offenders.

The findings of this Project would be statistically more powerful if a more comprehensive data base had been available dealing with illegal drug use and the criminal justice process for the period prior to the effective date of the 1973 revision. The Project has now built up more than three years' statistical time series data concerning these matters in New York and, to a lesser degree, elsewhere. With this platform built, it would be extremely unfortunate if compilation of these data were to terminate with the

conclusion of this particular Project. Arrangements should be made to continue to collect these data so that future analysts can evaluate the long-term effects of the State's existing drug law and, eventually, the operational effects of future amendments to it.

General Observations

This study Project has neither the data nor the expertise to seek to develop an overall recommendation to deal with the multiple problems of illegal drug use. The Committee and its staff have, however, had the benefit of a research experience that has ranged widely over many aspects of the drug trade and illegal drug use. On the basis of that experience, three general observations seem justified.

First, the use of heroin and other opiates is but one element of a larger problem. The misuse of all dangerous drugs—alcohol, cocaine, opiates, and other mood-changing drugs, some prescribed and some sold over the counter—all together constitutes "the drug problem." Problems with so many components do not yield to one-dimensional solutions. As no single drug treatment method is suitable for all users, so there is not likely to be a single legal approach that is suitable for all offenders.

Second, whether or not illicit drug use is for the most part a medical concern as some contend, it is incontrovertibly deeply rooted in broader social maladies. Narcotics use in particular is intimately associated with, and a part of, a wider complex of problems that includes family break-up, unemployment, poor income and education, feeble institutional structures, and loss of hope.

The final observation is a corollary of the second: it is implausible that social problems as basic as these can be effectively solved by the criminal law.

Part Two

SUPPORTING DATA

I

What Were the Effects of the 1973 Drug Law?

Findings on Drug Use

New York City: ***Heroin use was as widespread in mid-1976 as it had been when the 1973 revision took effect, and ample supplies of the drug were available.***

Heroin's status as an illegal drug makes it impossible to measure the extent of its use directly. Instead, an indirect approach was used similar to one developed by the National Institute on Drug Abuse for reporting national heroin trends.[1] Two steps were involved.

First, data about several different indicators of heroin use—each related to an aspect of use or supply—were gathered for a six and one-half year period beginning in January 1970 and ending on June 30, 1976. January 1970 was the earliest date for which data were available. By July 1976 a central provision of the 1973 law had been eliminated.

Second, the movement of the indicators during this period was analyzed statistically to determine whether and when shifts in heroin use patterns occurred, and to see how heroin use patterns that had existed prior to the 1973 law compared with those that existed after the new law became effective.

Interrupted Time Series Analysis (ITSA) was used to measure changes between the pre-law and post-law periods. ITSA was useful for the study of heroin use indicators because it is designed to differentiate shifts in long-term patterns of time series data from the random

1. National Institute on Drug Abuse, *Heroin Indicators Trend Report*, Pub. Nos. (ADM) 76-378 and (ADM) 76-315 (Washington, D.C.: United States Department of Health, Education and Welfare, 1976).

fluctuations that often occur.[2] Using this technique, it was possible to infer whether the 1973 law exerted a measurable influence on heroin use patterns or if these patterns were influenced primarily by factors that were present in both the pre-law and post-law periods. The results were interpreted with caution because there was uncertainty about what trends in heroin use to expect after the apparently large decline (during 1971-73) from so-called "epidemic" levels of use.

The picture that emerges from the analysis of several indicators probably gives a reliable representation of heroin use patterns, provided that the movements of more than one indicator are taken into account. The more similarity in the movement of the several indicators, the more confidence one can place in the results.

To ensure statistical reliability, the time series analysis focused primarily on the two indicators of heroin use for which data were consistently available over the six and one-half year period: narcotics-related deaths and reported cases of serum hepatitis.[3] Each has important limitations.[4] Nevertheless, they are the most reliable indicators of heroin use because they have been tabulated over a lengthy period of time, have been widely discussed in the literature,[5] and, taken together, reflect changes in both prevalence and incidence of heroin use.

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2. A detailed description of ITSA can be found in "The Effects of the 1973 Drug Law on Heroin Use in New York State," *Staff Working Papers of the Drug Law Evaluation Project*, No. 1, available from the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, hereafter cited as *Staff Working Papers*. See also D. T. Campbell and H. L. Ross, "The Connecticut Crackdown on Speeding: Time Series Data in Quasi-Experimental Analysis," *Law and Society Review* 3 (1968), pp. 33-53. G. E. P. Box and G. C. Tiao, "Intervention Analysis with Applications to Economic and Environmental Problems," *Journal of the American Statistical Association* 70 (March 1975), pp. 70-79.

3. The other indicators examined were (1) admissions to drug treatment programs, (2) the frequency with which narcotic drugs were noted in hospital emergency rooms, and (3) the price and purity of street-level heroin.

4. Scientific advances in measurement during the six and one-half year study period have improved the identification of both narcotics deaths and serum hepatitis. However, caution must be exercised when interpreting movements of these indicators. Methods of identification may vary across jurisdictions, making difficult a comparison of the narcotics use trend in one area with that in another. For the purposes of this study, attempts were made to standardize the definition of narcotics deaths using classifications established in the *Eighth Revision, International Classification of Diseases, Adapted for Use in the United States* I and II (Washington, D.C.: U.S. Department of Health, Education and Welfare, Public Health Service, 1975).

As no precise quantitative relationship between the level of an indicator and the level of narcotics use is known, the indicators are used only to measure changes in narcotics use. For a further discussion of the data and methodology, see *Staff Working Papers*, No. 1.

5. See Mark H. Greene and Robert L. DuPont, "Heroin Addiction Trends," *American Journal of Psychiatry* 131 (May 1974), pp. 545-550; Leon Gibson Hunt, *Assessment of Local*

Heroin Use

Interrupted Time Series Analysis did not detect a significant[6] decline in either narcotics deaths or serum hepatitis cases in New York City between the period 1970 to mid-1973 and the period mid-1973 to mid-1976. It must be kept in mind that ITSA does not simply compare average values of the indicators over the two periods (the average value in the 1973-76 period was lower than in the 1970-73 period); it takes the 1971-73 declines in deaths and serum hepatitis into account in comparing the 1970-73 period with the 1973-76 period.

To test hypotheses about the effects of the 1973 drug law on heroin use in New York City, it was necessary to choose a time, i.e., an intervention point, after which one might expect to see an effect. Several dates were possible. Beginning with the Governor's proposal of a strict drug law in January 1973, there was a large amount of publicity given to the possible penalties. In June, after the law's enactment, a state-financed publicity campaign was conducted which lasted through the summer until the law took effect on September 1.

January, June, and September 1973 were each used as alternative intervention points in ITSA tests for changes in the movements of both serum hepatitis and narcotics deaths in New York City. In no case was a statistically significant change found. These findings suggest that heroin use in New York City had not been reduced as a consequence of the 1973 drug law.

The data suggest that a sharp decline from very high levels of heroin use occurred during 1971 and 1972, and that by September 1973 heroin use had stabilized at levels far below those of the "epidemic" years.

Serum hepatitis reached a peak in 1971, declined to 1970 levels early in 1972, and then dropped sharply for the next year and a half (Chart 1). By September 1973, when the law became effective, the decline had nearly run its course. After that, serum hepatitis remained stable until 1975, when the number of cases began to rise again. This rise may reflect an increase in heroin use that had actually occurred before 1975, because when drug users contract serum hepatitis, the disease typically

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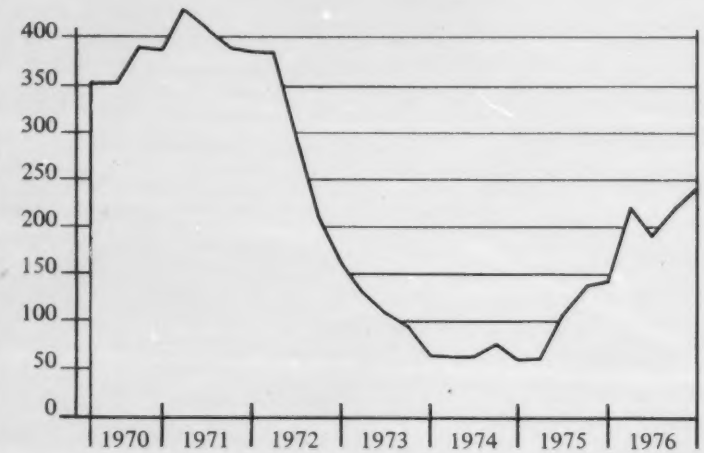
Drug Abuse (Lexington, Mass.: D.C. Heath and Company, Lexington Books, 1977); Lee P. Minichiello, *Indicators of Intravenous Drug Use in the United States 1966-1973: An Examination of Trends in Intravenous Drug Use Reflected by Hepatitis and DAWN Reporting Systems* (Washington, D.C.: Institute for Defense Analyses, 1975); National Institute on Drug Abuse, *op. cit.*

6. Statistical "significance" is a measure of the likelihood that the movements of an indicator are random fluctuations rather than true shifts. Herein, "significant" means that, statistically, there is less than a five percent chance that a movement is random.

CHART 1
SERUM HEPATITIS CASES IN NEW YORK CITY
(By Quarter)



Source: Center for Disease Control,
U.S. Department of Health, Education and Welfare.

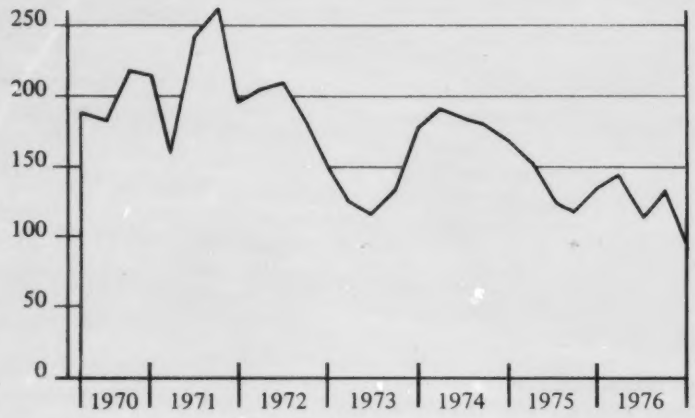
appears about one to two years after the onset of regular intravenous drug use.[7]

Narcotics deaths (Chart 2) reached a peak in 1971, declined for the next two years, and increased again for about nine months just as the 1973 law took effect. From the spring of 1974 through mid-1976, narcotics deaths declined gradually. There is some evidence that this decline in narcotics deaths was due more to a fall in the number of deaths from methadone than from heroin (see below, pp. 57-58). Application of ITSA to the data on narcotics deaths did not reveal a significant change in the pattern of deaths following introduction of the 1973 law. In the first half of 1976, there were about the same number of narcotics deaths (259) in New York City as there had been in the first half of 1973 (236).

Another indication of generally stable levels of heroin use in New York City came from the City's short-term methadone detoxification clinics. These were facilities for ambulatory patients which typically attracted

7. Minichiello, *op. cit.*

CHART 2
NARCOTICS DEATHS IN NEW YORK CITY
(By Quarter)



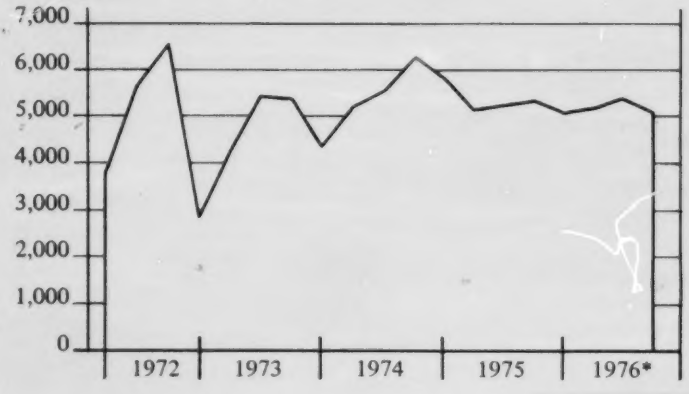
Source: City of New York Department of Health.

active users needing immediate relief from heroin addiction.[8] The number of admissions to the detoxification program demonstrates a consistency between 1973 and 1976 which suggests a stable pool of users from which the clinics drew their clients (Chart 3).

Interviews with drug treatment and police officials in New York City support the statistical analysis. Most of them doubted that the law had a long-term effect on the extent of heroin use or drug dealing. The prevailing opinion was that heroin use remained widespread throughout the period the law was in effect. The directors of six Manhattan-based drug-free treatment programs, for example, reported that heroin use was not curbed by the new law, and that street dealing was practiced more openly during 1976 than it had been in 1973. At most, according to undercover agents of the New York City Police Department, heroin dealing became more covert for a short time immediately after the new law went into effect (see pp. 46-48 below).

8. Data from drug treatment programs should be used with caution because the data can be affected by such factors as funding levels and changes in the admissions criteria of the programs.

CHART 3
ADMISSIONS TO NEW YORK CITY
AMBULATORY DETOXIFICATION PROGRAM
(By Quarter)



*First three quarters only.
Source: City of New York Department of Health.

The question that arises from these data and observations is whether the 1973 New York State drug law contributed to this relatively stable pattern of heroin use after September 1973. The foregoing evidence suggests that the law had no impact because analysis of narcotics deaths, serum hepatitis, and admissions to the detoxification program failed to reveal a persistent shift in heroin use patterns following the introduction of the new law.

The question of whether the heroin use patterns described above would have been any different in the absence of the new law can be dealt with more adequately by comparing New York City trends with trends in other East Coast cities where drug laws did not change. The results of that analysis are reported below (pp. 41-46).

Supply of Heroin

Stable levels of heroin use might themselves be the resultant of several forces which influence demand and supply of the drug. Stiffening the penalties for sale and possession of heroin should restrain both demand and supply. But the new law might not work as well on one side of the market as on the other. It is possible, for instance, that the drug law had the

desired effect of reducing demand (meaning that users would purchase less heroin at a given price), but that supply conditions eased enough to offset the reduced demand. This would be the result if supply rose enough to lower the price, and thereby induce more consumption.

In order to investigate developments in the supply of heroin after 1973, interviews were conducted with more than 35 officials of the New York City Police Department (NYPD) and the regional office of the Federal Drug Enforcement Administration (DEA). The response was uniform: as heroin from Mexico gradually replaced Turkish heroin, a steady supply of heroin and an active heroin economy existed in New York City between 1973 and mid-1976.

In the spring of 1975, a joint enforcement effort known as Operation Broadbase was undertaken by the DEA and the NYPD to identify sources of the heroin available in New York. Agents active in Operation Broadbase reported that 23 different "brand" names of heroin, representing various sources and qualities of the drug, were being sold aggressively in Harlem. Later, over 100 "brand" names were identified. Operation Broadbase also found "brand" name heroin in the East Village area of lower Manhattan. In September 1976, sections of Harlem, where drugs had been traded for years, were still open-air marketplaces for drugs.

Source of Supply

A 1972 ban on the production of Turkish opium[9] has been credited with an important role in the decline of heroin use that occurred before the 1973 drug law went into effect.[10] The restriction on Turkish crops, however, created a market gap, and by 1974 Mexican heroin was common in many large cities in the United States.[11] A year later it had supplanted Turkish heroin in New York. Preliminary data from the Drug Enforcement Administration suggest that the market for Mexican heroin developed somewhat more slowly in New York than it did in other East Coast cities, but that by 1975 Mexican heroin was as predominant in New York as it was elsewhere.[12] Half the heroin bought by undercover agents as part of Operation Broadbase in early 1975 was of Mexican origin.[13]

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9. The ban was rescinded to permit another legal harvest in June and July of 1975. Harvesting was accomplished by the "poppy straw" method, a new technique designed to minimize diversion to illegal markets. As of December 1976, there was no evidence of a new flow of Turkish heroin into the United States.

10. Strategy Council on Drug Abuse, *Federal Strategy for Drug Abuse and Drug Traffic Prevention* (Washington, D.C.: U.S. Government Printing Office, 1975), p. 24.

11. *Ibid.*, pp. 25-26.

12. Drug Enforcement Administration, Strategic Intelligence Staff, personal communication.

13. Drug Enforcement Administration, New York City Regional Office, personal communication.

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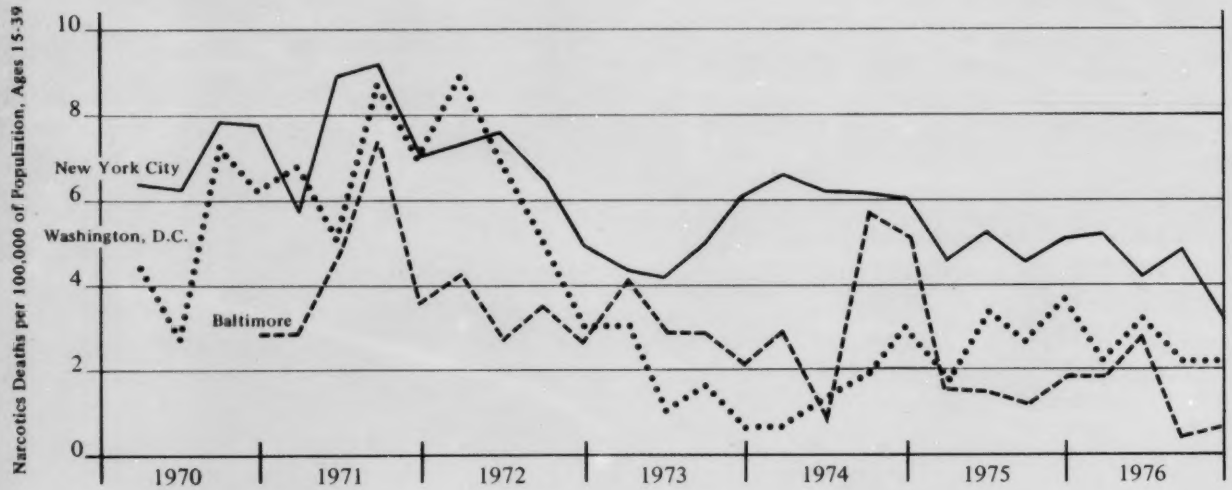
CHART 4
NARCOTICS DEATHS IN NEW YORK CITY AND COMPARISON CITIES
(By Quarter)



Sources: City of New York Department of Health; Baltimore Medical Examiner's Office; Washington, D.C. Medical Examiner's Office.

Price of Heroin[14]

There were no drastic changes in heroin price to suggest marked shifts in the economics of supplying the drug. According to the available information, the price of heroin to the user increased steadily between 1970 and mid-1973.[15] There was a break in the upward trend as prices fell during the second half of 1973. Heroin prices remained relatively stable after early 1974. In early 1976, the price of heroin to the user was still below the peak price reached in mid-1973 ($1.32 per pure milligram compared to $1.75).

The relatively stable levels of heroin use and of heroin price imply that supply conditions were steady as well. Apparently, the costs of distributing heroin in the New York area did not change greatly with the shift to Mexican sources of supply.

New York City: *The pattern of stable heroin use between 1973 and mid-1976 was not appreciably different from the average pattern of other East Coast cities.*

To explore further whether heroin use patterns in New York City after September 1973 had been influenced by the new law, New York City heroin use indicators were compared with indicators from other East Coast cities. A pattern unique to New York would be evidence that the 1973 law had had an impact. A pattern of stable or slightly increasing levels of heroin use in New York might, after all, be unusual in comparison to patterns in other cities. On the other hand, if the experience of other cities was similar to New York's there would be no reason to believe that the 1973 law had a major influence. In other words, events in the other cities act as "controls" for events in New York.

Philadelphia, Baltimore, and Washington, D.C. were the cities chosen for this purpose. They were selected because they are demographically similar to New York. These cities demonstrated patterns of heroin use similar to New York's prior to 1973.

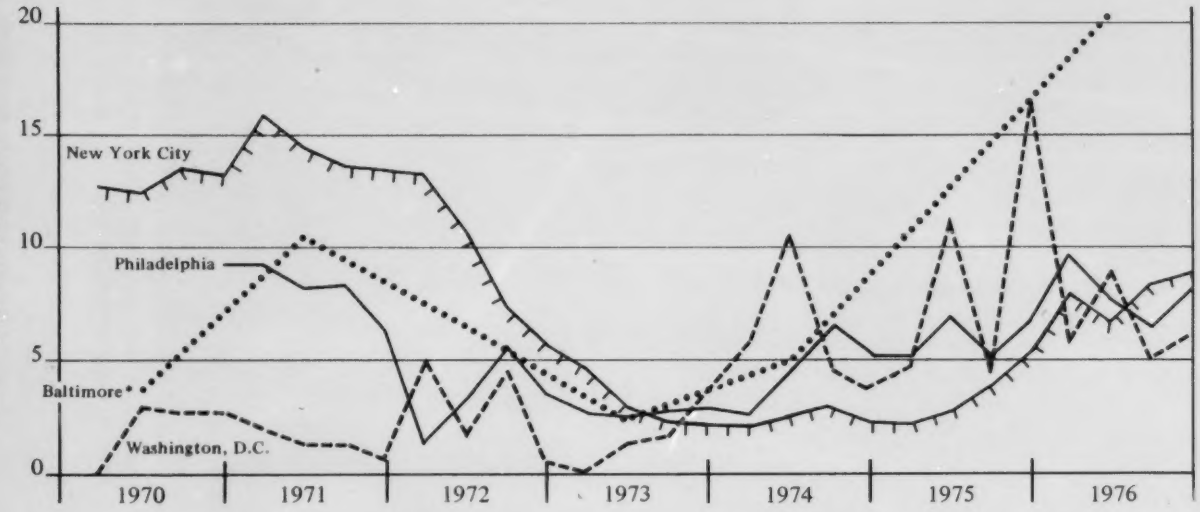
Comparisons of Trends

Some of the indicators of heroin use in the comparison cities went up between 1973 and 1976 and some went down, but none of the statistical (ITSA) tests used to detect persistent changes between the pre-and post-law periods showed such changes. Thus, although there were some short-term differences between New York and the other cities, the absence of a significant post-1973 change in the pattern of heroin use in New York was not unusual. The data which were statistically tested are exhibited in Charts 4 and 5. (Serum hepatitis data from Baltimore were not subjected to

14. Throughout this report "price" refers to "price per pure milligram" so that changes in heroin purity can be taken into account.

15. The increase in price before mid-1973 is documented in George F. Brown, Jr. and Lester R. Silverman, *The Retail Price of Heroin: Estimation and Application* (Washington, D.C.: The Drug Abuse Council, Inc., MS-4, May 1973). Data for 1973 and later are from the Drug Enforcement Administration, Statistical and Data Services Division.

CHART 5
SERUM HEPATITIS IN NEW YORK CITY AND COMPARISON CITIES
(By Quarter)



*Only annual data available for Baltimore; plotted as quarterly average.
Sources: For New York City and Washington, D.C.: Center for Disease Control, U.S. Department of Health, Education and Welfare; for Pennsylvania: Pennsylvania Department of Health; for Baltimore: Baltimore Health Department.

statistical tests because they were available only on a yearly basis and only for seven years.)

In another attempt to isolate patterns of heroin use unique to New York, differences in narcotics-related deaths and in serum hepatitis between New York and the other cities were examined. For example, a time series was constructed by subtracting narcotics deaths per capita in Washington, D.C. from narcotics deaths per capita in New York City for each month covered by existing data for the two cities. The resulting series, which measures the difference between narcotics death rates in New York and Washington, was then subjected to time series analysis to determine if major shifts occurred in the relative performance of the two cities. A shrinking difference in the frequency of deaths between New York and Washington under the new law would indicate a relative improvement in New York. Similar analyses were carried out with other cities for narcotics-related deaths and for serum hepatitis cases.

None of these tests uncovered evidence that New York's success in controlling heroin use was superior to the success of other cities. On balance, it appears that the trend in heroin use in New York was not significantly different from trends in other East Coast cities.

Year-to-Year Comparisons

A compilation of year-to-year changes in narcotics deaths and serum hepatitis for New York and the three comparison cities showed a similar result. These data are presented in Table 1.

In 1974, the first full year the new drug law was in effect, narcotics deaths rose and serum hepatitis fell in New York. The other cities experienced just the opposite developments. Despite these inconsistencies in 1974, the East Coast average and the New York City figures are

TABLE 1

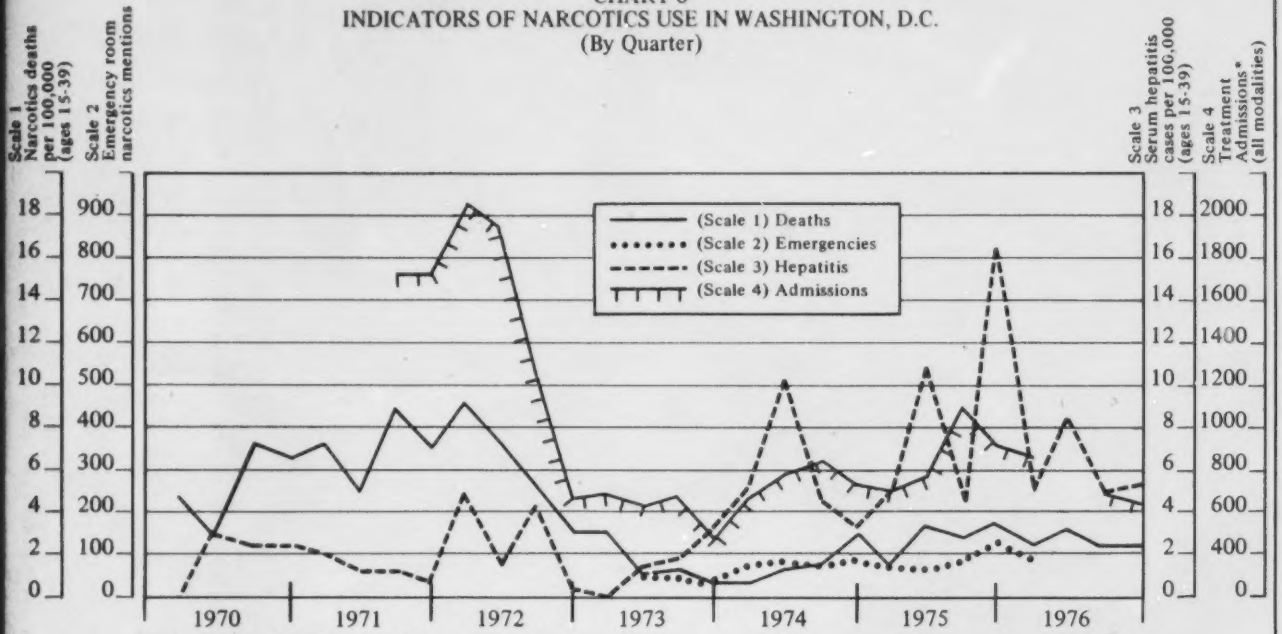
YEAR-TO-YEAR PERCENTAGE CHANGES IN INDICATORS OF HEROIN USE

	1971-1972	1972-1973	1973-1974	1974-1975	1975-1976
Serum Hepatitis					
New York City	-35%	-62%	-34%	+70%	+96%
Average of other East Coast cities	-41	-41	+114	+62	+26
Narcotics Deaths					
New York City	-13	-28	+28	-24	- 9
Average of other East Coast cities[a]	+ 7	-25	- 7	-22	- 6

[a]Narcotics deaths in Philadelphia were estimated at 60% of all drug deaths.

Source: Calculations based on data from cities' medical examiners and health departments and from the United States Department of Health, Education and Welfare, Center for Disease Control.

CHART 6
INDICATORS OF NARCOTICS USE IN WASHINGTON, D.C.
(By Quarter)


Scale 1 Narcotics deaths per 100,000 (ages 15-39)
Scale 2 Emergency room narcotics mentions
Scale 3 Serum hepatitis cases per 100,000 (ages 15-39)
Scale 4 Treatment Admissions* (all modalities)
(Scale 1) Deaths
(Scale 2) Emergencies
(Scale 3) Hepatitis
(Scale 4) Admissions
0 2 4 6 8 10 12 14 16 18
0 100 200 300 400 500 600 700 800 900
0 400 600 800 1000 1200 1400 1600 1800 2000
1970 1971 1972 1973 1974 1975 1976

*Second quarter 1976 not available.

Sources: Narcotics Deaths: Washington, D.C. Medical Examiner's Office; Emergency Room Narcotics Mentions: Drug Abuse Warning Network, U.S. Drug Enforcement Administration; Serum Hepatitis Cases: Center for Disease Control, U.S. Department of Health, Education and Welfare; Treatment Admissions: Washington, D.C. Narcotics Treatment Administration.

surprisingly similar in view of the sharp year-to-year changes that occurred in the individual indicators. There is no indication that heroin use was brought under control in New York any better than it was elsewhere.

A summary of movements of the heroin use indicators for each of the comparison cities is given below.

Washington, D.C.

Washington, D.C. was the comparison city that presented the strongest contrast to New York. Time series analysis did not find the differences pronounced enough to be statistically significant, but the indicators strongly suggest a steady rise in heroin use in Washington after 1973 (Chart 6). Narcotics deaths and treatment program admissions in Washington showed a steady increase from the beginning of 1974 until the end of 1975. The same indicators remained stable or showed a gradual decline in New York for this period. Serum hepatitis, which remained stable in New York in 1974 and then increased in 1975, increased in Washington throughout this period. Dr. Robert L. DuPont, Director of the National Institute on Drug Abuse, has confirmed a steady increase in heroin use in Washington during 1974 and 1975.[16] (In the first half of 1976, the movements of the heroin use indicators in Washington appeared to be similar to those in New York City.)

Taken alone, the evidence from Washington suggests the possibility that there was a postponement in New York City of a rise in heroin use. This possibility is discussed further below (pp. 46-48).

Baltimore

Neither Baltimore nor Philadelphia exhibited the consistency of movement in heroin indicators that was evident in Washington. In Baltimore, as in New York, narcotics deaths peaked in 1971 and then declined for two years. After 1973, narcotics deaths declined gradually (but not significantly) in New York, while Baltimore registered a small but statistically significant decline in narcotics deaths (data analyzed with a Poisson probability model). By contrast, marked increases in serum hepatitis occurred in Baltimore during 1974 that were not present in New York City.

Philadelphia

The Philadelphia data also lacked consistency. Serum hepatitis, the only indicator that is directly comparable with New York City data, showed an increase after September 1973. Increases in cases of serum hepatitis in New York did not occur until 1975. On the other hand, drug-related deaths

16. Robert L. DuPont, M.D., "Observations on the Changing Heroin Problem in the District of Columbia," address given before the Metropolitan Washington Health Association, Arlington, Virginia, March 12, 1976.

(which include but do not specifically identify narcotics-related deaths in Philadelphia) declined for the entire post-law period. As already mentioned, narcotics deaths in New York City rose initially and then declined gradually after the spring of 1974.

New York City and Other New York State Jurisdictions: *The new law may have temporarily deterred heroin use.*

There is some evidence that the 1973 drug law had a restraining effect on heroin traffic for a short period of time, but the effect was too brief to produce a permanent reduction in use.

Most indications of the temporary retrenchment in the heroin trade come from interviews with enforcement and drug treatment officials across the State. These individuals were in broad agreement that apprehension about the new law led dealers and purchasers alike to exercise caution in carrying on their business at the time the law went into effect. There is, in addition, a scattering of numerical evidence to support this view.

The law did not generally result in newly aggressive arrest policies, nor in an immediate rise in prison sentences; the deterrent must therefore have been attributable to widespread knowledge about the law and its penalties. Legislative debate and public discussion of the proposed law received wide coverage in the press during the early months of 1973, and before the law went into effect the State spent $500,000 on newspaper, radio, television, and transit advertising programs. These advertisements warned drug users of the impending penalties and urged them to enter treatment in order to avoid punishment.

The apparent success of the publicity campaign suggests that if it had been possible to translate the publicized threat into a real increase in risk, a more persistent deterrent effect would have been created.

New York City

New York City law enforcement and treatment officials estimated that the restraining effect on the heroin trade lasted two to four months.

Police undercover agents and precinct officers in the South Bronx and in Manhattan said that after the new law went into effect on September 1, 1973, heroin dealing became more covert. Dealers tended to operate away from the streets, and they preferred to sell only to known buyers. According to these agents, business gradually returned to normal when the threat of the law failed to materialize in a way that could be felt on the street.

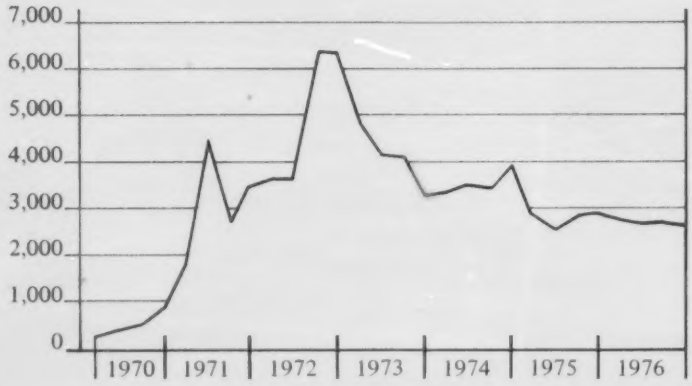
Other enforcement officials agreed. The Deputy Director of the New York Drug Enforcement Task Force (a combined unit of Federal, State, and City forces) reported that street sales just after the law went into effect tended to concentrate on transactions involving small quantities of heroin.

The Captain of the Queens unit of the Police Department's Narcotics Division said undercover buys by the Division were more difficult to make at that time because sellers were more cautious in accepting new customers. These descriptions suggest increased difficulty in obtaining heroin, and by implication some decline in use during this period.

With the temporary tightening of heroin supplies, some increase in treatment enrollments might have been expected. Governor Rockefeller had expressed this hope when the law was passed. Directors of several drug-free programs in Manhattan and the Director of the New York City Methadone Maintenance Treatment Program said the law did not induce clients to enter treatment. Officials from the drug-free programs joined the police in pointing out that after the law became effective dealing was temporarily conducted behind closed doors rather than on the streets.

Two items of data lend some support for the thesis of a temporary deterrent. (The short time period involved and the absence of drastic changes in the data precluded the possibility of rigorous statistical analysis.) First, admissions to methadone maintenance clinics in the City, which had declined drastically in 1973, stabilized during 1974 before resuming their decline (Chart 7). This suggests that there was an incentive

CHART 7
ADMISSIONS TO METHADONE MAINTENANCE CLINICS IN NEW YORK CITY
(By Quarter)



Source: Methadone Information Center, Community Treatment Foundation, Inc., New York

to enter treatment during 1974, but it does not constitute strong evidence. The sharp decline in admissions during 1973 probably could not have been sustained; a similar decline in Washington, D.C. was also followed by a year of relative stability.

Second, New York City was alone among East Coast cities in avoiding a rise in serum hepatitis during 1974, an indication that new heroin use was stable during 1973. Washington, D.C., Philadelphia, and Baltimore all saw rises in serum hepatitis during 1974 (Chart 5, above).

Other indicators of heroin use, including the purity of heroin available on the street and the frequency with which heroin was involved in hospital emergency room cases, do not suggest that 1973 or 1974 was unusual in New York. The restraint in the marketplace was apparently not great enough, nor of long enough duration, to affect the course of these indicators.

Areas Outside New York City

Treatment personnel and law enforcement officials interviewed in other regions of the State recalled a temporary but marked impact on the behavior of both buyers and sellers when the 1973 law first became effective. Estimates of its duration ranged from six weeks to nine months. Here again, observers reported that normal dealing patterns resumed when drug dealers and drug users realized that the likelihood of arrest and prosecution was not much greater under the new law.

In Buffalo, four officials — the regional contract manager for the New York State Office of Drug Abuse Services, the supervisor of a local methadone clinic, the chief of the Drug Enforcement Administration's Regional Office, and the head of the Narcotics Bureau of the Buffalo Police Department — agreed that the law had had an immediate but temporary impact on heroin use and dealing in Erie County (see below, p. 127). The open use of heroin declined and dealing became more cautious.

In Rochester, according to the directors of two drug-free treatment facilities and the assistant district attorney in charge of narcotics prosecution, levels of use remained about the same from 1970 on, although the drug trade became more secretive after 1973.

Similar adjustments in the drug market were noted by officials in Westchester, Nassau, and Suffolk counties. In every case, an initial period of covert dealing was followed by a gradual return to prior market conditions.

Treatment officials throughout the State denied that the new law had provided an incentive for addicts to enter treatment. A former Commissioner of the New York State Drug Abuse Control Commission (after February 1976, the Office of Drug Abuse Services) pointed out that

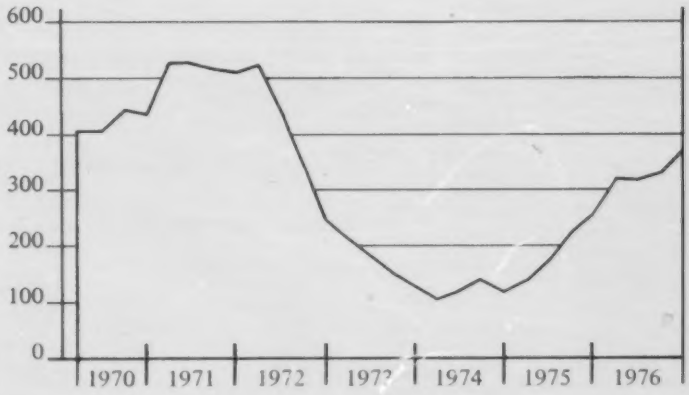
between May and August 1973 admissions to the Commission's programs were at the lowest level since the programs had been established. Ironically, he attributed the drop to unwillingness on the part of addicts to identify themselves in the face of the threat presented by the impending law.

New York State as a Whole and the Area of the State Excluding New York City: ***There is no evidence of a sustained reduction in heroin use after 1973.***

New York City is the center of the New York State heroin trade, and, as would be expected, the decline in narcotics use that occurred in New York City between 1971 and 1973 also was evident on a statewide basis. The decline in serum hepatitis was not as pronounced as it was in New York City, but examination of both serum hepatitis and narcotics deaths strongly suggests that heroin use in New York State had been declining since early in 1972 (Charts 8 and 9).

The pattern of heroin use in New York State after 1973 also mirrors the New York City experience. Heroin use statewide did not decline during the 34 months the 1973 law was in effect, and Interrupted Time Series

CHART 8
SERUM HEPATITIS CASES IN NEW YORK STATE
(By Quarter)

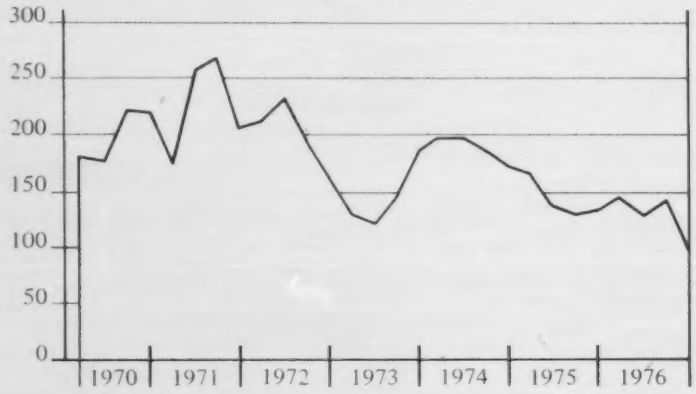


Source: Center for Disease Control,
U.S. Department of Health, Education and Welfare.

Analysis revealed no long-term movement of the indictors that could be associated with enactment of the 1973 drug law.

Each of the available indicators from four nearby states (Massachusetts, Connecticut, Pennsylvania, and Maryland) was analyzed to learn whether any trends unique to New York could be isolated. No such trends were found. Thus, the analysis suggests that the 1973 drug law, which failed to exert a measurable impact on New York City heroin use patterns, did not have a significant impact on heroin use patterns in the State as a whole either.

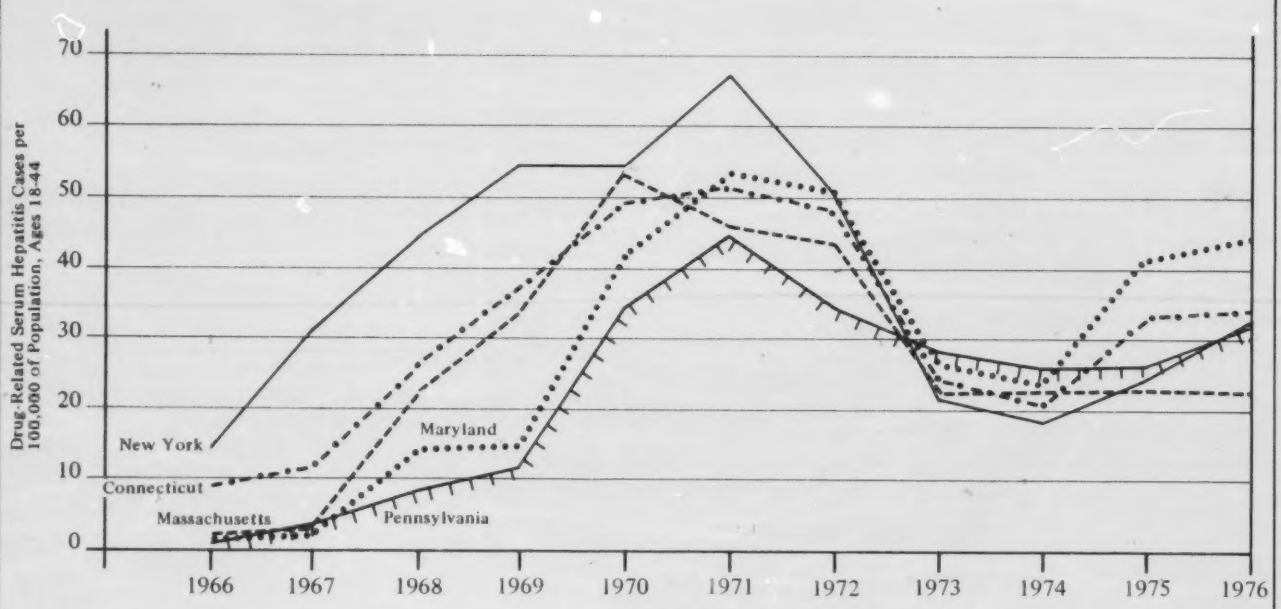
CHART 9
NARCOTICS DEATHS IN NEW YORK STATE
(By Quarter)



Sources: Office of Biostatistics, New York State Department of Health and City of New York Department of Health.

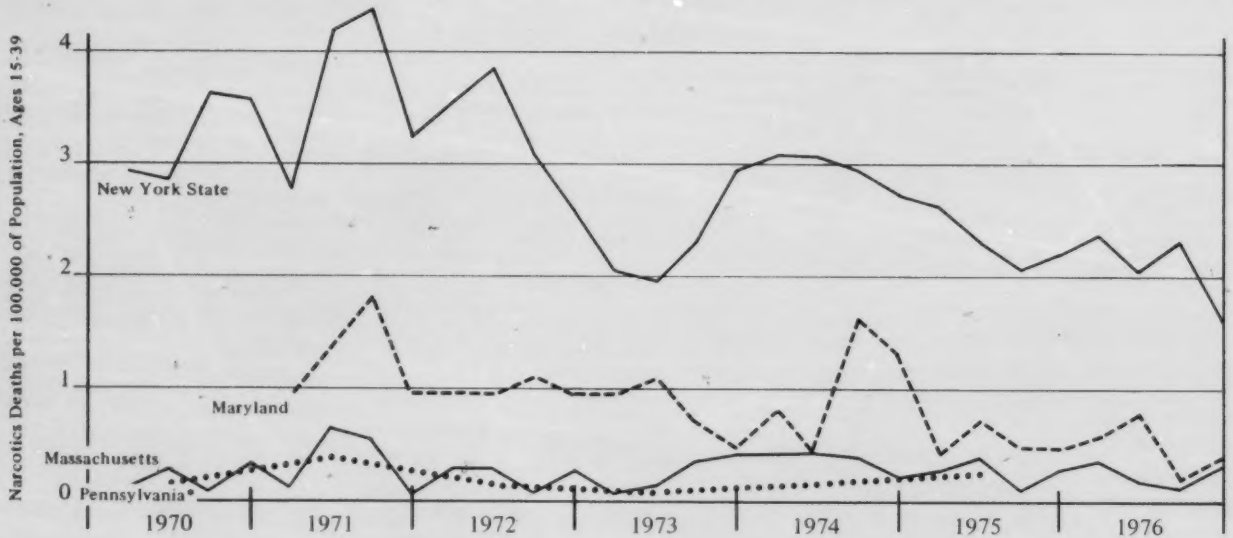
Estimates of the number of drug-related hepatitis cases were derived for each state from data from the Center for Disease Control using the method developed by Lee Minichiello (footnote 5). These data are available only on an annual basis and therefore there were not enough observations to conduct useful statistical analyses. However, visual examination of the eleven year period from 1966 through 1976 supports the conclusion that the pattern of drug-related hepatitis in the comparison states closely followed the pattern found in New York State (Chart 10). Each of the four comparison states experienced a decline after 1971. None later returned to

CHART 10
DRUG-RELATED HEPATITIS IN NEW YORK STATE AND COMPARISON STATES
(Annually)



Source: Center for Disease Control, U.S. Department of Health, Education and Welfare.

CHART 11
NARCOTICS DEATHS IN NEW YORK STATE AND COMPARISON STATES
(By Quarter)



*Only annual data available for Pennsylvania; plotted as quarterly average.
Sources: City of New York Department of Health; Office of Biostatistics, New York State Department of Health; Baltimore Medical Examiner's Office; Pennsylvania Department of Health; Massachusetts Department of Public Health.

their peak levels, although all of the states except Massachusetts have moved toward them.

Compared to the other states, New York did not show a marked decrease in narcotic deaths following the introduction of the 1973 law. When the State's post-law and pre-law patterns were subjected to Interrupted Time Series Analysis, the decline in narcotics deaths that occurred after the middle of 1974 was not found to be statistically significant (Chart 11). In other words, the decline was not unusual when compared to the pronounced changes in deaths that occurred throughout the period since 1970. On the other hand, the decline in Maryland after 1973 was statistically significant (using a Poisson model) despite some temporary increases. No measurable post-1973 changes were detected in either Massachusetts (Poisson model) or Pennsylvania (visual inspection).[17]

Areas Outside New York City

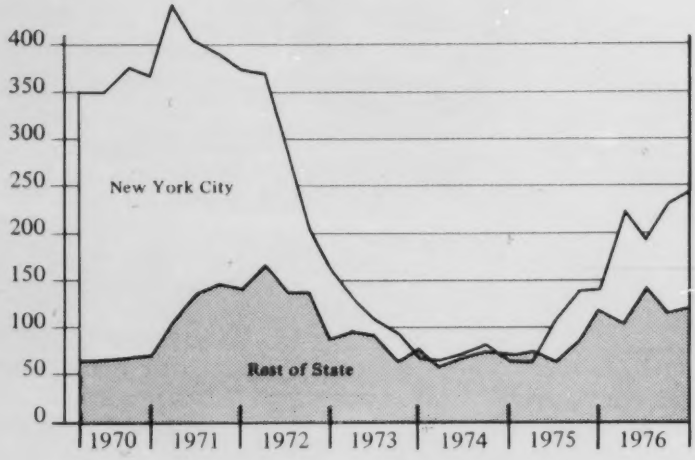
To determine whether heroin use trends outside New York City were influenced by the law, available data were gathered from several cities and counties in the State and from comparable out-of-state locations. Many of the data existed for only short periods of time. In many instances, very few cases of narcotics deaths and serum hepatitis were recorded. These limitations made it impossible to conduct reliable statistical comparisons. Law enforcement and treatment officials in several counties were interviewed about the impact of the 1973 law on heroin use in their communities. The results of these discussions are reported below (pp. 121-145).

By aggregating data for all the non-New York City areas of the State it was possible to use Interrupted Time Series Analysis to learn how heroin use patterns after the effective date of the new law compared with pre-law patterns. This analysis produced the same result for the entire non-New York City area as for New York State as a whole: heroin use did not decline while the 1973 drug law was in effect.

Despite some differences which appear from time to time between New York City and other counties, the broad movements of narcotics deaths and serum hepatitis were similar between 1970 and 1975 (Charts 12 and 13). No movement of the indicators was detected that could be associated with enactment of the 1973 law. As expected, both narcotics deaths and serum hepatitis were considerably lower in the area outside New York City than in the City.

17. Narcotics deaths in Pennsylvania, while numerous, were available only on a yearly basis, and the six data points precluded the possibility of valid statistical analysis. Narcotics deaths in Connecticut were too infrequent to display any meaningful trend.

CHART 12
SERUM HEPATITIS CASES IN NEW YORK CITY AND REST OF STATE
(By Quarter)



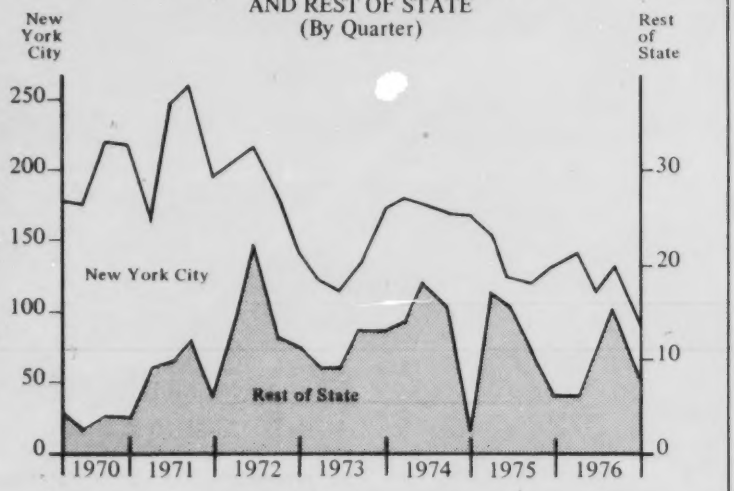
Source: Center for Disease Control,
U.S. Department of Health, Education and Welfare.

New York City: ***Most evidence suggests that the illegal use of drugs other than narcotics was more widespread in 1976 than in 1973, and that in this respect New York was not unique among East Coast cities.***

The most dramatic provisions of the 1973 law concerned narcotics offenses, but penalties for the illicit sale and possesion of non-narcotic drugs such as stimulants, barbiturates, and sedatives — the so-called "soft" drugs — as well as cocaine also were increased. For example, unauthorized possession of ten ounces or more of a barbiturate became punishable by a minimum of one year in prison, while under the old drug law someone convicted of the same offense might have been discharged without any penalty whatever.

Many non-narcotic drugs can have a debilitating effect on the user and raise serious social problems. The legal manufacture of these drugs is carefully controlled, but their distribution is so widespread that diversion into illegal channels often occurs. Stimulants and depressants accounted for more than one-third of all drug-related cases in metropolitan New York hospital emergency rooms, as well as for a rising proportion of all drugs used by clients entering treatment programs between 1974 and 1976.

CHART 13
NARCOTICS DEATHS IN NEW YORK CITY
AND REST OF STATE
(By Quarter)



Sources: City of New York Department of Health; Office of Biostatistics, New York State Department of Health.

A nationwide survey estimated that five percent of the adult population used these drugs for non-medical purposes in 1975.[18]

The data available to measure changes in the extent of non-narcotic drug use were even more limited than the indicators employed to analyze heroin use. Questionnaires administered among the general populaton have occasionally been used, but results of such surveys were not available for New York. The one available measure of changes in non-narcotic drug use came from hospital emergency rooms. Hospitals began reporting cases involving drug use to the national Drug Abuse Warning Network (DAWN) in 1973.[19] In time, this source will provide a valuable gauge of

18. Strategy Council on Drug Abuse, *Federal Strategy for Drug Abuse and Drug Traffic Prevention* (Washington, D.C.: U.S. Government Printing Office, 1976).

19. DAWN is jointly sponsored by the National Institute on Drug Abuse and the U.S. Drug Enforcement Administration; the available data cover the period from July 1973 to April 1976, and are drawn from a representative sample of emergency rooms in non-Federal, general hospitals in the New York City Standard Metropolitan Statistical Area (SMSA) which includes New York City and Nassau, Suffolk, Westchester, and Rockland counties. Only data from emergency rooms that reported throughout the entire period from July 1973 to April 1976 were analyzed.

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trends in the use of many drugs. Unfortunately for the Project's work, however, no comparable data exist with which to measure pre-1973 patterns.

Data from hospital emergency rooms reporting to DAWN were statistically analyzed by comparing two one-year periods after the 1973 drug law went into effect, the first from October 1973 to September 1974 and the second from April 1975 to March 1976. Analysis of these data (by a Poisson probability model) indicated a rise in the use of non-narcotic drugs, suggesting that the 1973 drug law did not effectively curb their use. In the absence of pre-law data, however, this conclusion cannot be firm.

Depressants (barbiturates, sedatives, and tranquilizers) accounted for over one-third of all cases reported, and the frequency with which they were reported increased 19% between the two periods. Cases involving cocaine and other stimulants increased by 40%, but these drugs have historically accounted for less than 4% of all drug cases. Over the same period, heroin cases, which were also reported by hospitals, amounted to less than one-third of the depressant cases and increased only 5%.

There is some evidence that the increase in non-narcotic drug use after 1973 was a continuation of past trends. Between 1971 and 1974, the New York City Transit Authority conducted chemical analyses of urine samples from over 3,000 job applicants a year in order to detect recent drug use.[20] Non-narcotic drugs were detected with increasing frequency, from 0.4% of all applicants tested in 1971 to 1.1% in 1973.

Another large local employer, the New York Telephone Company, also conducted urinalyses for large numbers of prospective employees.[21] The Telephone Company's results ran from 1970 to 1975 and covered an average of 4,500 individuals a year. The percentage of non-narcotic drug users detected increased from 2.1% of those tested in 1970 to 3.2% in 1973.

These increases are statistically significant and, although small in magnitude, may be indicative of a trend in the general population. Both employers recorded decreases in detected drug use during 1974, a result which accords with the hospital emergency room data. Non-narcotic drug-related emergency room visits were at their lowest levels during 1974, but increased during 1975 and early 1976.

Unlike cocaine, the manufacture of which was entirely illegal, depressants and some stimulants generally were diverted from legal sources for illicit use. An alarming rise in reported thefts of these drugs[22] is further evidence of an increase in non-narcotic drug use. Measured

20. New York City Transit Authority, Medical Director's Office, personal communication.

21. New York Telephone Company, Office of Research and Development, Medical Director, personal communication.

22. Data made available by the U.S. Drug Enforcement Administration.

between the same periods used to examine the emergency room data (October 1973 to September 1974 and April 1975 to March 1976), reported thefts of all drugs in New York City increased 45% from 355 to 533, and the number of dosage units stolen increased 86% from 1.4 million to over 2.6 million. The major component of this trend was thefts of non-barbiturate depressants, the volume of which grew from 0.1 million to nearly one million dosage units over this period. Thefts of stimulants other than amphetamines also rose steadily, but at their peak still contributed only ten percent to the total.[23]

Methadone

Methadone was a special case among narcotics, as it was legally dispensed in drug treatment programs. Methadone maintenance programs were opened on a large scale in New York City during 1971, and the number of clients in treatment remained at about 32,000 after 1973. New York City had more clients enrolled in such programs than any other city, and consequently had more trouble preventing diversion of the drug for illegal use. Several studies have described the problem of methadone diversion,[24] some claiming that the extent of unsupervised use of methadone in New York City was second only to that of heroin use.[25]

The data support the claim that methadone diversion was widespread. They also suggest that illicit methadone use had been declining while heroin use was relatively stable and use of non-narcotic drugs increased. In hospital emergency rooms, methadone cases outnumbered heroin cases from the middle of 1973 to May 1976, but methadone cases were declining steadily during this time. Methadone overdose deaths also were much more frequent than deaths from heroin throughout this period, but methadone deaths were declining while heroin deaths fluctuated widely, but without apparent trend (Table 2).[26]

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23. One set of data that appears to contradict the finding of increasing use of depressants comes from medical examiners in the New York SMSA, who also reported to the DAWN system. Between the same 12-month periods, deaths involving depressants appear to have declined 48%. However, according to DAWN administrators, there was a reporting error in these data, causing an unknown degree of underestimation. In the New York SMSA, barbiturates were erroneously reported to DAWN only when a narcotic was also present.

24. Comptroller General of the United States, *Security Controls for Methadone Distribution Need Improving* (Washington, D.C.: U.S. General Accounting Office, January 1975).

25. John Martin, *Methadone Diversion II, A Study in Five Cities* (Rockville, Md.: National Institute on Drug Abuse, 1975).

26. Evidence that deaths involving methadone are an indication of unsupervised use rather than a function of the treatment population comes from the New York City Medical Examiner, who reported that in at least 85% of deaths involving methadone, the victim was not enrolled in a methadone program at the time of death. Data from semi-annual reports on deaths from narcotism, Office of the Chief Medical Examiner of the City of New York.

TABLE 2

INDICATORS OF HEROIN AND ILLICIT METHADONE USE IN THE NEW YORK CITY STANDARD METROPOLITAN STATISTICAL AREA[a]

Six-month Period (Month and Year)	Emergency Room Cases		Deaths	
	Methadone	Heroin	Methadone	Heroin
7/73 - 12/73	683	387	498	174
1/74 - 6/74	662	414	499	146
7/74 - 12/74	590	435	412	202
1/75 - 6/75	546	460	379	101
7/75 - 12/75	460	397	250	113
1/76 - 6/76[b]	399	390	267	161

[a]These data are from the entire SMSA and are larger than those from New York City alone, presented above.

[b]Estimated from data for the first four months.

Source: Drug Abuse Warning Network, National Institute on Drug Abuse, Rockville, Md., and U.S. Drug Enforcement Administration, Washington, D.C.

The number of methadone users seeking treatment in State-financed drug-free treatment programs also fell after 1973.[27]

Comparison with Other Cities

The rise of soft drug use in New York City from 1973 on is highlighted when the rise is compared to changes in other large East Coast cities. However, since data from the other cities are limited to the period following mid-1973, the extent to which the law effected this change cannot be determined.

Hospital emergency room data were collected from Philadelphia and Washington, D.C. (Table 3).[28] Hospitals in New York City treated 20% more patients for emergencies involving non-narcotic drugs in the second period than in the first, a rise that was nearly matched in Philadelphia. Washington, D.C. experienced no statistically significant change in the level of either drug category.

Poly-drug Use and Drug Substitution

Poly-drug use (the regular use of more than one drug) is frequently cited as an emerging drug pattern, but precise measures of trends in poly-drug use in New York City were not available. Two rough measures provided conflicting evidence. The average number of drugs mentioned per patient admitted to an emergency room for a drug-related disorder remained fairly constant at about 1.3 from the middle of 1973 to the middle of 1976.

27. New York State Office of Drug Abuse Services, Bureau of Management Information Services.

28. Baltimore, which was one of the cities used as a comparison city to New York for heroin use trends, was not included in the emergency room or medical examiner reporting systems during this time.

TABLE 3

PERCENTAGE CHANGE IN EMERGENCY ROOM NON-NARCOTIC DRUG CASES FROM OCTOBER 1973-SEPTEMBER 1974 TO APRIL 1975-MARCH 1976

	Depressants[a]	Stimulants[a]
New York City	+19%	+40%
Philadelphia	+17	+19
Washington, D.C.	- 5	+ 5

[a]Depressants include tranquilizers, barbiturates, and non-barbiturate sedatives. Cocaine and all stimulants make up the second category, and generally occur only one-tenth as often as do depressants. These data do not distinguish between cases involving legally and illegally obtained drugs.

Sources: Drug Abuse Warning Network, National Institute on Drug Abuse, Rockville, Md., and U.S. Drug Enforcement Administration, Washington, D.C.

During the same period, however, the average number of drugs per drug death victim, as detected by medical examiners, increased from 1.6 to 2.2, suggesting a large rise in multiple drug use.

Responses to a survey of clients in New York City treatment programs indicated that there had been no increase after September 1973 in the number of different drugs they used on a regular basis.[29] Most of those interviewed had been heroin addicts before entering treatment. The respondents reported that they occasionally supplemented heroin with other drugs during periods when heroin prices were high. Most often, cocaine and methadone were the preferred drugs. Those interviewed said they were extremely reluctant to abstain altogether from heroin, even if heroin prices rose significantly. In a hypothetical situation in which heroin was not available at a reasonable price, most of the respondents indicated a preference for methadone over any other alternative.

Findings on Crime

New York State: ***Serious property crime of the sort often associated with heroin users increased sharply between 1973 and 1975. The rise in New York was similar to increases in nearby states.***

In jurisdictions suffering from high levels of crime and heroin use, a large share of crime is often attributed to heroin users. Indeed, one aim of the 1973 drug law was to reduce, either directly or indirectly, the amount of crime committed by drug users.[30] A direct reduction would occur if drug law violators who otherwise would be committing crimes on the street were

29. In early 1977, the Drug Law Evaluation Project conducted a non-random survey of 290 clients enrolled in treatment programs throughout New York City.

30. Annual Message of the Governor to the Members of the Legislature of the State of New York, January 3, 1973. See also 1973 *N.Y.S. Laws*, ch. 676 (3).

incarcerated. An indirect reduction would occur if drug use levels were reduced, thus limiting the amount of crime committed by users to support their drug—particularly heroin—habits.

The relationship between drugs and crime, and especially between heroin and crime, is complex and elusive, a matter of considerable speculation even today.[31] The motivations of drug users who commit criminal offenses, such as the degree to which the individual user is "driven" or "compelled" to commit a crime to support a drug habit, are undoubtedly varied. A frequent research finding is that the majority of heroin addicts who commit crimes were committing them before they began using heroin.[32] Quite possibly, many would continue these acts whether or not heroin were available to them. In addition, illicit drug use is at most one cause of crime. Many others, including unemployment, low income, and social disorganization, now are generally accepted as among the root causes of crime.

Because so many factors play a role in influencing the pattern of crime in a community, the explanation of year-to-year changes in crime rates is difficult. It is also difficult to determine the impact of a specific event on short-term changes in crime. However, if the 1973 law had exerted a persistent restraint on serious property crimes, the offenses most often associated with heroin users,[33] these crimes should have increased more slowly in New York than in nearby states.[34] Instead, as measured by the FBI, the rate at which felonious property crimes increased in New York was virtually identical to the average increase in Maryland, Pennsylvania, and New Jersey, three nearby states where the 1973 law was not a factor. The rate of increase in these crimes was somewhat lower in New York than in the other states during the years immediately preceding introduction of the new law (Table 4).[35]

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31. Stephanie Greenberg and Freda Adler, "Crime and Addiction: An Empirical Analysis of the Literature, 1920-1973," *Contemporary Drug Problems* 3 (Summer 1974). None of the information presented in this section deals with the cause and effect relationship between narcotics use and crime. However, it is not necessary to establish causality in order to evaluate the impact of the 1973 drug law on felony crime committed by heroin users.

32. *Ibid.*, p. 260.

33. William C. Eckerman et al., *Drug Usage and Arrest Charges*, Report of the Drug Control Division SCID-TR-4 (Washington, D.C.: U.S. Department of Justice, Bureau of Narcotics and Dangerous Drugs, Office of Scientific Support, December 1971).

34. Comparisons are made in terms of crime complaints per 100,000 population.

35. The data in the *Uniform Crime Reports* refer only to crime complaints and not to offenses actually committed. Since not all crime is reported to the police, these data provide only an approximation of the amount of crime committed or of trends in crime rates over time. The proportion of crimes reported to the police may vary between jurisdictions or over time, and police agencies may differ in the way they record crime complaints. They may also change their recording practices over time.

TABLE 4

AVERAGE ANNUAL PERCENTAGE CHANGE IN FELONIOUS PROPERTY CRIME COMPLAINTS[a]

Location	Pre-law (1970-1973)	Post-law (1973-1975)
New York State	-1%	+15%
Average of Maryland, Pennsylvania and New Jersey	+4%	+14%

[a]Complaints per 100,000 population.

Source: Federal Bureau of Investigation, *Uniform Crime Reports*.

A comparison was also made between New York City, where most of the drug-related crime in the State was concentrated, and Philadelphia, Baltimore, and Washington, D.C., the three cities used as controls in measuring heroin use trends. Serious property crimes in New York City did not increase at a slower rate than in these other communities. In fact, Table 5 shows that in the post-law years New York City experienced a more rapid increase than the comparison cities did.

TABLE 5

AVERAGE ANNUAL PERCENTAGE CHANGE IN FELONIOUS PROPERTY CRIME COMPLAINTS[a]

Location	Pre-law (1970-1973)	Post-law (1973-1975)
New York City	-3%	+12%
Average of Philadelphia, Baltimore and Washington, D.C.	+1%	+ 7%

[a]Complaints per 100,000 population.

Source: Federal Bureau of Investigation, *Uniform Crime Reports*.

The rapid growth of felonious property crimes in New York State and the similarity between New York and the other states suggest that the 1973 law did not have the desired effect of reducing drug-related crime in New York State.

New York City: ***There was a sharp rise in non-drug felony crimes between 1973 and 1975. However, the rise was apparently unconnected with illegal narcotics use: non-drug felony crimes known to have been committed by narcotics users remained stable during that period.***

A successful drug law would be most effective in combatting crime if drug users were responsible for a large share of crime in the State. Exam-

ination of the evidence for Manhattan suggests that users of narcotics were indeed responsible for a large percentage of the borough's non-drug felonies, but that this percentage fell in the years between 1971 and 1975.

Crimes committed by narcotics users in Manhattan between 1971 and 1975 follow a pattern generally similar to the movement of New York City indicators of heroin use during the same period. User crime declined during 1972 and 1973 and leveled off in 1974 and 1975. Since the 1973 law failed to exert a measurable impact on heroin use in New York City (see pp. 33-46, above), this similarity of movement may be an indication that the law also failed to have any sustained impact on crime committed by narcotics users in New York City after September 1973.

Information from several sources was used to make estimates of crime committed by narcotics users. Since 1971, doctors in the New York City Department of Corrections have examined adult males sent to the Manhattan pre-trial detention facility to learn whether they are physically dependant on narcotics. Data from this program, and from the courts and the police were used to estimate crimes attributable to narcotics users.[36] It was found that the proportion of non-drug felony crimes in Manhattan committed by all users of narcotics declined from 52% to 28% between 1971 and 1975.[37,38]

The fact that in 1975 narcotics users committed a quarter of all serious crimes supports the common view that users present a serious threat to public safety. Nonetheless, a decline of the magnitude found is noteworthy.

The bulk of the 1971 to 1975 decline in user crime occurred before the new drug law went into effect (Table 6), with the sharpest decline occurring in the percentage of crimes committed by users who were not addicted. The

36. The methodology for this study involved sampling 3,500 Manhattan jail records and 1,100 court records between 1971 and 1975, to determine the proportions of narcotics users in the jails and courts and the felony charges they faced. Extrapolations from these data to estimate street crime were made using arrest and crime complaint figures from the New York City Police Department. For a description of the methodology see "Crime Committed by Narcotics Users in Manhattan," *Staff Working Papers*, No. 2.

37. *Ibid.* Non-drug felonies included in this study were murder, rape, assault, robbery, burglary, and grand larceny. Crimes involving weapons charges, drugs, and the possession of stolen property could not be included because there were no reliable complaint statistics for these offenses.

38. For the purposes of this study, a pragmatic distinction was made between *users* and *addicts*. Narcotics *users* were all offenders for whom evidence of narcotics use was found in jail records. Narcotics *addicts* were all those who required detoxification from heroin or methadone in detention. Users of "soft" drugs were classified with non-users.

percentage of crimes committed by addicts remained relatively stable over the five-year period.

TABLE 6

PERCENTAGE OF NON-DRUG FELONIES ATTRIBUTABLE TO NARCOTICS USERS AND NON-USERS IN MANHATTAN[a]

	1971	1972	1973	1974	1975
Users	52%	43%	35%	32%	28%
Addicts	30	30	24	25	24
Non-addicted users	22	13	11	7	4
Non-users	48	57	65	68	72

[a] The distributions were tested for significant change over the five year period, using the chi-square test. The declines in crime by users and non-addicted users, and the increase in crime by non-users, were all significant at the .05 level; the decline in addict crime was not found to be significant. The 95% confidence limits for these estimates are roughly ± 5 percentage points. Results were based on the following sample sizes: 1971, 421; 1972, 439; 1973, 461; 1974, 511; 1975, 339.

Source: "Crime Committed by Narcotics Users in Manhattan," *Staff Working Papers, No. 2*

Applying these percentages to the total number of non-drug felonies committed between 1971 and 1975 produced the results found in Chart 14.

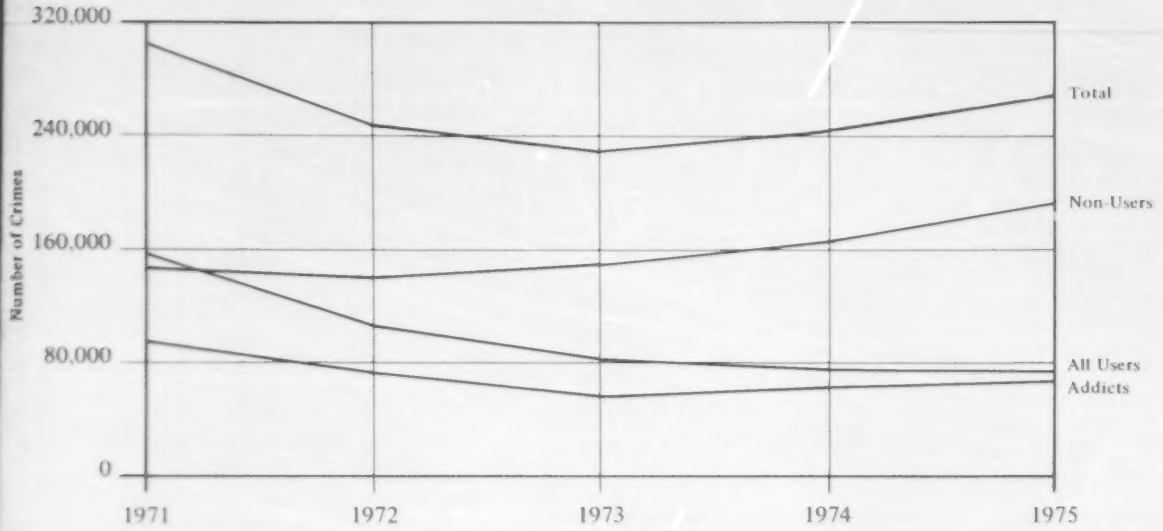
Crimes committed by users of narcotics (including addicts) showed no statistically significant change (using a t-test) from 1973 to 1975 (Chart 14). Crimes committed by addicts also remained constant during this period. On the other hand, the total number of crimes committed in Manhattan increased significantly after the new law went into effect. A parallel increase occurred in the number of crimes committed by non-users. Thus, the overall increase between 1973 and 1975 seems to be the result of an increase in crimes committed by non-users and not the result of additional crimes committed by users of narcotics.[39]

Comparable data from out-of-state cities are not available. Without these data, which would have provided information about trends in cities not affected by the 1973 law, it was not possible to test statistically whether the post-1973 changes in the percentage and volume of crime committed by narcotics users in New York City could be traced to the 1973 law.

Sparse information from other jurisdictions suggests that in Manhattan a relatively large proportion of offenders use narcotics. This is not surprising in view of the fact that New York City has a higher

39. This study of crimes attributable to narcotics users included only felony crimes and therefore underestimated the *total* number of offenses, including misdemeanors, committed by users. The proportion of crimes attributable to users would increase if users were found to commit a higher proportion of misdemeanors, e.g., shoplifting, than of felonies.

CHART 14
TOTAL NUMBER OF NON-DRUG FELONIES IN MANHATTAN ATTRIBUTABLE TO NARCOTICS USERS, NARCOTICS ADDICTS AND NON-USERS



Source: ***Staff Working Papers*** No. 2, "Crime Committed by Narcotics Users in Manhattan."

concentration of heroin users than any other city in the country.[40]

The implications of these results for enforcement policies are clearest in jurisdictions with high concentrations of users. In Manhattan, for example, with 28% of all non-drug felonies attributable to narcotics users, it would be reasonable for police to pursue narcotics sale and possession arrests as a means of curbing property crimes, particularly where dealing is open and arrests are relatively easy to make. But this strategy would have a chance of success only if the arrests could be processed through the courts with dispatch and punishment imposed. In cities with smaller proportions of crime attributable to users, or where arrests are difficult to accomplish, the wisdom of basing a crime control strategy on the pursuit of drug offenders is less clear, since the impact on property crime rates would probably be smaller.

New York City: ***The available evidence suggests that the recidivist sentencing (predicate felony) provision of the 1973 law did not significantly deter prior felony offenders from committing additional crimes.***

The "predicate felony" provision of the 1973 law was written to reduce crime committed by the "career" or hard-core criminal. This provision applied to any defendant indicted for a felony who had previously been sentenced for a felony; it applied to both drug crimes and other crimes.[41] Once indicted, a defendant who had previously been sentenced for a felony could not plead guilty to a misdemeanor (he could plead to a lower felony). Once convicted, a second offender was subject to a minimum State prison term of one and one-half years.[42]

Although the provision applied to drug and non-drug offenses alike, its primary purpose was to combat non-drug crime. Because more second offenders than drug offenders were arrested in New York City during 1971, the predicate felony provision had the potential to have a major impact on crime and the criminal justice system.

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40. A 1971 study by the U.S. Bureau of Narcotics and Dangerous Drugs found that the proportion of arrestees currently using heroin was more than 53% in New York, while in San Antonio, with the next highest proportion, only 23% of arrestees were current users (William C. Eckerman, et al., *Drug Usage and Arrest Charges, op. cit.).* Using the narcotics user file maintained by the U.S. Drug Enforcement Administration (formerly the Bureau of Narcotics and Dangerous Drugs), Joseph A. Greenwood estimated that between 39% and 48% of the nation's narcotics users resided in New York City from 1969 through 1973. Cited in William A. Glenn and Tyler D. Hartwell, *Review of Methods of Estimating Number of Narcotics Addicts* (Research Triangle Park, North Carolina: Resarch Triangle Institute, August 1975). Another study estimated that between 40% and 52% of the nation's narcotics users were in New York City in 1971. W. H. McGothin, V. C. Tabbush, C. D. Chambers et al., *Alternative Approaches to Opiate Addiction Control: Costs, Benefits and Potential* (Washington, D.C.: Bureau of Narcotics and Dangerous Drugs, 1972).

41. The terms "predicate felony offender" and "second felony offender" mean second or subsequent felony offender. The predicate felony provision does not apply to class A drug felonies, where other mandatory sentencing provisions apply.

42. The previous conviction must have occurred within the defendant's last ten years at liberty.

Between January 1974 and June 1976, 5,144 predicate felony offenders were committed to State prisons in New York State.[43] More than 70% of these sentences were from New York City. Even so, an analysis of the arrest and court activities of a sample of felony offenders revealed that the predicate felony provision apparently had not been a deterrent to criminal activity by previously convicted felony offenders. That is, repeat offenders were just as active in their criminal pursuits as before. Moreover, arrestees with prior felony convictions were not incarcerated at a higher rate under the new law.

The effects of the predicate felony provison were analyzed in two ways. First, to establish the deterrent power of the statute, arrest records for several hundred convicted felons were followed to see if there was any reduction in the likelihood of rearrest after the new law went into effect. Second, for all those offenders who were rearrested, the new arrests were traced through the courts to determine if the chance of being sent to prison (or jail) had gone up under the new law. A successful law should have resulted in fewer rearrests and a higher chance of incarceration. Neither result occurred.

Deterrence by Threat of Punishment

The predicate felony provision apparently did not deter the commission of crime by repeat offenders. Convicted felons should have been arrested less frequently after 1973 than before if the law had had its expected deterrent effect. They were not. Previously convicted felons were arrested with the same frequency after the law as before (Table 7), and this result does not provide evidence of an enhanced deterrent.

In this analysis, arrests were used as an indirect measure of criminal activity, i.e., it was assumed that changes in the volume of arrests among a specified group of offenders were an indication of changing criminal activity within that group (although an arrest of any individual offender would not prove his guilt). On the other hand, if the frequency of arrests of prior offenders was determined solely by police policy, the comparison would confuse the effects of changes in that policy with the effects of the changing deterrent. No police officials suggested that a policy change with respect to arrest of prior offenders had taken place under the predicate felony provision.

The sample upon which Table 7 is based excluded offenders imprisoned after their initial felony conviction. It is possible that a deterrent had been created by the predicate felony provision which will curtail future crime by

43. There were, in addition, an unknown number of such sentences between September 1973 and December 1973.

those offenders, an effect not evident in offenders who were not previously imprisoned. Such a result is not likely, however. Offenders who were convicted for a second time and who had previously spent time in prison were highly likely to receive a sentence of incarceration again even before the predicate felony provision became effective. An estimated 84% of such offenders were sentenced to prison or jail in 1971.[44] Thus, the added threat posed by mandatory prison sentences would have meant less to those offenders than to offenders not previously incarcerated.

TABLE 7

FELONY ARRESTS FOR PRIOR FELONY OFFENDERS, NEW YORK CITY

Number of Felony Rearrests (in a 2 year period)	Original Conviction in 1970 or 1971, and Subsequent Arrest Period Before Predicate Felony Provision		Original Conviction in 1972 or 1973, and Subsequent Arrest Period Under Predicate Felony Provision	
	Number of Offenders Rearrested	Percent	Number of Offenders Rearrested	Percent
0	178	79.8%	175	79.5%
1	26	11.7	23	10.5
2	13	5.8	11	5.0
3	0	0.0	5	2.3
4 or more	6	2.7	6	2.7
Total	223	100.0%	220	100.0%
Average	0.37		0.41	

Source: Drug Law Evaluation Project sample.

To assemble the required number of cases, a random sample of calendar days was selected. New York City Supreme Court sentencing calendars were examined for each day selected. All sentences meeting the following criteria on the given day were chosen for the sample: the sentence was for a non-drug felony, the defendant was not a Youthful Offender, and the sentence was other than a term of incarceration. Defendants in all cases which met the criteria were followed forward in time to investigate subsequent arrest histories. For the first group, convictions occurred between September 1970 and August 1971. Arrest experience for offenders in this group was traced from September 1971 through August 1973. For the second group, convictions occurred between September 1972 and August 1973. Arrests for offenders in this group were traced between September 1973 and August 1975. Drug offenders were eliminated from the sample to maximize the percentage of repeat offenders who would be subject to predicate felony sentencing. If drug offenders continued to commit drug crimes, a large number of these crimes would fall into the class A category and the offenders would not be sentenced as predicate felons (see footnote 41). The omission of drug offenses from the sample probably did not bias the results because drug offenders were not likely to represent a high proportion of those subject to the predicate felony statute.

The New York State Division of Criminal Justice Services provided the criminal histories. Samples in the two periods were similar as to age, sex, borough and prior arrest history of defendants.

Deterrence Through Incarceration

The predicate felony law might have prevented crime by incarcerating dangerous offenders who otherwise might have remained at large. However, evidence is that these potential benefits were not realized: the number of second felony offenders who were sent to prison apparently did

44. Vera Institute of Justice, personal communication, March 1976.

not increase after the law was enacted. The reason is that declines in the percentage of arrests leading to indictment and conviction more than offset the increase in the percentage of convicted second felony offenders who were sent to prison.

Table 8 documents the evidence for the reduced risk of indictment and conviction following an arrest of a previously convicted felon. These

TABLE 8

PROBABILITY OF INCARCERATION FOR SECOND FELONY OFFENDERS IN NEW YORK CITY (NON-DRUG ARRESTS ONLY)

	Arrests (1970-1973) Where Defendant Was Not Subject to Predicate Felony Provision	Arrests (1973-1976) Where Defendant Was Subject to Predicate Felony Provision
Number of felony arrests in sample	78	146
Percentage of felony arrests resulting in indictments	40%	24%
Percentage of indictments resulting in convictions	90	71
Percentage of convictions resulting in incarcerations:		
Local jail	12[a]	16[b]
State prison	58[a]	76
Total incarcerations	70%[a]	92%
Percentage of felony arrests resulting in incarcerations in superior court	24%[a]	16%

[a]Two sentences were unknown. Percentages use only the 26 known sentences as a base.

[b]Sentence apparently in conflict with statute.

Source: Drug Law Evaluation Project samples. Individuals were selected by the process described in the note to Table 7. For each of the 443 cases, any non-drug felony arrest which occurred after the sample conviction was used as an observation. All results were divided into two groups: those that occurred before September 1973 and those that occurred after August 1973. Rearrests which occurred through December 1976 were included. All of the cases were followed through the New York City courts. Cases were eliminated if the disposition was not known or had not yet occurred, or if the rearrest did not take place in New York City. Altogether, 224 arrests were successfully followed through the New York City courts.

These arrests were not a random sample of felony arrests of prior felons in New York City. However, there is no reason to believe that the two groups would present a biased sample of such arrests.

Because of the small number of cases in this sample, statistical tests did not prove significant in all categories. Indictment and conviction rates for the two groups were found to be different from each other, using an X^2 test at the 95% level of significance. Imprisonment rates for the two groups were not statistically different from one another. However, the State prison rate of 76% is statistically different from the hypothetical 100% rate.

results were obtained by following all arrests of the offenders in the Project's sample (see note to Table 7) through the criminal justice system. These arrests do not represent a scientific sampling of all arrests where the defendant was a prior felon, but the results suggest several areas where implementation problems arose.

New arrests of prior felons between 1970 and 1973 resulted in an indictment 40% of the time. Under the new law, that ratio dropped to 24%. A more modest drop, from 30% to 19%, occurred for all non-drug felony arrests (recidivists and others combined). These figures indicate that the drop in indictments of predicate felons may have been greater than the general trend for all criminal cases. The indictment rate was still higher for recidivists, but the priority given by prosecutors to indicting repeat offenders apparently did not increase under the predicate felony statute.

Convictions in predicate felony cases also dropped after the predicate felony provision was enacted. Only 25 of 35 indictments (71%) resulted in a conviction, compared to 90% of indictments before the new provision. Indications are that convictions in non-predicate felony cases also declined during that period, but not quite as severely. (Convictions in all non-drug felony cases in New York City fell from 89% of indictments in 1972 to 82% in 1975.)

Those offenders who were convicted of a second (or subsequent) felony found their chances of going to State prison increased, as expected. However, even though the law mandated State prison sentences for convicted second felony offenders, some of these offenders (a surprisingly high 6 out of 25 in the sample) received a non-State prison sentence. Apparently neither the judge nor the prosecutor was aware of the defendant's prior conviction at the time of sentencing. In most of these cases, the presentence report prepared by the Department of Probation failed to reveal the prior conviction.

The net result of the adjudication process in predicate felony cases was that the probability of incarceration for the individual arrestee did not rise despite the mandatory sentencing provision. Under the old law, 24% of prior felons newly arrested for a felony had ultimately been sentenced to prison or jail from the Supreme Court; under the new law, 16% were incarcerated. If only State prison sentences are considered, the comparable percentages are 20% under the old law and 13% under the new law.

Although the risk of incarceration facing persons arrested for second felony offenses declined after 1973, it is theoretically possible that the decline in risk could have been offset by a large increase in the total number of arrests of prior offenders. The available evidence, however, does not point to such a result. The average number of non-drug felony arrests in New York City rose from about 71,000 per year in the period from 1971 to

1973 to about 78,000 per year in the period from 1974 to 1976, an increase of 10%. However, it would have been necessary for the number of arrests of prior felons to increase by fully 50% between those two periods in order to nullify the decline in the risk of imprisonment facing an arrestee.[45]

Imprisonment

The post-1973 declines in the indictment rate and conviction rate in cases involving arrestees with prior felony convictions might have occurred even if the predicate felony provision had not been in effect. One possible way to examine the potential impact of the predicate felony provision (taken by itself) is to estimate the effect the provision had on the sentencing of repeat felony offenders who were actually convicted. The result of this analysis will yield an estimate of the number of convicted repeat offenders who might not have been incarcerated in the absence of the predicate felony provision.

Such an estimate may be derived as follows:

1. According to the sample results (Table 8), 76% of convicted second felony offenders were sentenced to State prison under the predicate felony provision, compared to 58% sentenced to State prison previously.[46] This represents an increase of 31%.

2. There is reason to believe, however, that some of this increase would have occurred even without the predicate felony provision. Between 1970 and 1975, for example, there was a sharp increase in the proportion of non-drug felony offenders as a whole (including both first offenders and repeat offenders) who were sentenced to prison. Between 1970 and 1973, about 26% of all convicted non-drug felony offenders received State prison terms. During 1974 and 1975, about 41% were sentenced to State prison. This was an increase of 58% over the 1970-1973 period.

3. Thus, only a part of the 31% increase in prison sentences for repeat felons can be attributed to the predicate felony provision itself.

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45. In order for the number of incarcerations in the post-law period to have equalled the number in the pre-law period, it would have been necessary for arrests of second felony offenders to increase sufficiently to offset the decline in the risk of incarceration facing arrestees. This risk declined from 24% in the pre-law period to 16% in the post-law period (for State prison and local jail sentences combined). In order to offset this decline, it would have been necessary for arrests to increase enough to make up the difference between 16% and 24%, or by 50%. The risk of a sentence to State prison (excluding local jail) for second felony arrestees declined from 20% in the pre-law period to 13% in the post-law period. In order to offset this decline, it would have been necessary for arrests of second felony offenders to increase by enough to make up the difference between 13% and 20%, or by just over 50%.

46. Although the sample was small, this result is very similar to the result derived from more extensive work conducted by the Vera Institute of Justice. In a study of felony dispositions in New York City during 1971, Vera found that 51% of prior felony offenders were sentenced to prison following a subsequent felony conviction. Personal communication, March 1976. See also Vera Institute of Justice, *Felony Arrests: Their Prosecution and Disposition in New York City's Courts* (New York: Vera Institute of Justice, 1977).

To estimate the impact of the predicate felony provision on the number of second felony offenders imprisoned after conviction, it was assumed that one quarter of that 31% increase would have occurred even without the predicate felony provision, i.e., that upon conviction, repeat offenders would have been sentenced to prison somewhat more frequently simply because all convicted offenders were being sentenced to prison more frequently.[47] Under this assumption, 62% of convicted repeat offenders would have been sentenced to State prison even without the predicate felony provision (compared to the 58% sentenced to prison between 1970 and 1973).

4. Table 8 shows that 76% of the sample's repeat offenders were sentenced to State prison under the predicate felony provision. The difference between this 76% and the estimated 62%—or 20% of those actually imprisoned—can be attributed to the predicate felony provision itself, the remaining sentences having been likely to occur in any event. In other words, about four-fifths of the State prison sentences actually imposed under the predicate felony provision would have been imposed even if the provision had not been in effect.

5. Thus, although the evidence cited above points to a decline in the number of second felony offenders *convicted* after 1973, about 20% of those who were convicted and sentenced to prison would not have been so sentenced in the absence of the predicate felony provision.

In New York City, 3,664 convicted second felony offenders were sentenced to State prison between 1974 and mid-1976 under the predicate felony provision. The reasoning of the preceding paragraphs suggests that 20% of these prison sentences (about 730, or 300 annually) would not have occurred had the predicate felony provision not been in effect.[48]

It must be reemphasized that despite the increase in the likelihood of imprisonment following conviction, this increase was probably not sufficient to result in an absolute increase in the *number* of repeat offenders sentenced to prison because convictions themselves were probably lower after the new law took effect.[49]

47. A higher proportion of the rise in prison sentences for repeat offenders could be attributed to the general upward trend in prison sentences (i.e., higher than the one-quarter assumed here). Such alternative assumptions would have the effect of *lowering* the resulting estimate of the number of prison terms attributable to the predicate felony provision.

48. The estimate of the rate of State prison sentences after September 1973 (76% in Table 8) is based on a small number of cases. If the estimate is far too low and the incarceration rate were actually as high as 86%, there would have been a 48% increase in prison sentences for prior felons under the new law (58% to 86%). Assuming, as above, that one-quarter of this increase would have occurred even without the law, the prison rate for repeat offenders would have been 65% in the absence of the predicate felony provision. Under these circumstances, there might have been about 900 fewer prison sentences over the 1974-mid-76 period in the absence of the provision, or about 360 fewer prison sentences per year.

49. There are no data available to directly measure the number of repeat offenders convicted in the period before the new law took effect.

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Prosecutor Policies

Although the predicate felony provision directly affected only the plea bargaining and sentencing procedures in superior court, a defendant's prior record continued to have a bearing on the way his case was processed throughout both the lower and superior courts. For example, it remained a factor which a judge should consider in setting bail.[50] In New York City, a defendant's prior record also remained a factor which prosecutors considered in deciding whether a case would be prosecuted by one of the specialized bureaus established by the district attorneys to handle high priority cases.

According to interviews with several assistant district attorneys, however, a defendant's prior felony record played a minor role in the original charging process in the lower court. It took on a greater, but still not major, role in the decision on whether to submit the case to the grand jury for indictment or to accept a guilty plea to a reduced charge (a misdemeanor) in the lower court. Enactment of the predicate felony provision apparently did not have a major impact on these areas of prosecutorial discretion. The main elements in both the charging and the indictment decisions remained the seriousness of the crime and the strength of the proof against the defendant.

One important reason that a defendant's predicate felony status had little bearing on the original charging and indictment processes in New York City is that information about prior convictions was often not readily available to the prosecutor at these early stages of the court process. Apparently, no systematic effort was made by prosecutors while cases were in the pre-indictment stages of the adjudication process to determine whether the defendant was a previous offender. The conviction information contained on a defendant's official criminal history — his "rap sheet" — was notoriously incomplete, and it often remained incomplete until a presentencing report was prepared by the Department of Probation after he was convicted. Even at this stage the information was not always obtained, as evidenced by the fact that several repeat felony offenders in the Project's sample were not given the prison sentences required by the statute.

Even where specialized bureaus had been established in a district attorney's office to prosecute cases involving career criminals or particularly serious crimes, the incomplete conviction data available to the prosecutor could result in a faulty evaluation of cases. Cases were typically assigned to these bureaus on the basis of a point system, with a higher point value given to a prior felony offender than to a defendant who had only prior felony arrests. (The rap sheets were generally reliable in listing past

50. CPL 510.30 (2) (a) (iv).

arrests.) No systematic effort was made at this stage of case assignment to complete missing conviction data in order to assure proper evaluation of the case. Prosecutors attributed the failure to complete this information to a deficiency in resources.

Outside New York City, prosecutors reported that the identification of prior felons early in the court process was not particularly difficult. This was apparently due in large measure to the fact that defendants arrested in a particular county were likely to have had a criminal record restricted to that county.

For example, because Monroe County covers the City of Rochester and much surrounding area, a defendant's prior history was likely to be available within Monroe County itself. There, a defendant's rap sheet was always completed by a prosecutor while the case was still in the lower court so that predicate felons were clearly identified at that stage. The assistant district attorney who handled a case in the lower court could readily complete the rap sheet by checking his own files in the usual case where the prior arrest had been in Monroe County, or by phoning the appropriate jurisdiction in the few cases where the prior arrests had been elsewhere.

In New York City, on the other hand, prior arrests of newly arrested defendants in one of the City's constituent counties had often taken place in another.

Also, prosecutors reported that the prospect of the lengthy superior court process itself inhibited decisions to seek indictments in cases where the defendant was known to be a prior felon. There are no data on the point, but prosecutors indicated that indictments charging class D and class E felonies (the two lowest felony classifications) against prior felons were difficult to dispose of by plea, and were likely to result in trials. This was because, as defense attorneys pointed out, there was little advantage to pleading guilty; a prison sentence imposed on an offender who pled guilty was often no shorter than one following conviction at trial. Therefore trial, and the chance of acquittal, was frequently the preferred strategy of the defense.

One judge suggested that dispositions in class D and class E predicate felony cases could have been achieved more readily by plea if it had been possible to impose a definite one-year prison term instead of the indeterminate sentence required by the statute.

Findings on Other Results of the 1973 Law

Measured in Dollars, the Experiment of the 1973 Law Was Expensive.

Under the Emergency Dangerous Drug Control Program (EDDCP),[51] which was enacted to implement the substantive provisions of the 1973

51. 1973 *N.Y.S. Laws*, ch. 603.

law, 49 new court parts were opened across the State,[52] 31 of which were located in New York City.[53] These parts cost approximately $76 million through June 1976 (Table 9). The average annual operating cost of a part was $630,000.[54] The entire cost was borne by the State. Normally, New York City and the counties outside New York City finance all superior court expenditures with the exception of a small portion of judges' salaries.

TABLE 9

OPERATING EXPENDITURES FOR THE FORTY-NINE NEW PARTS 1973-1976[a]
(in thousands of dollars)

	9/1/1973 to 3/31/1974	4/1/1974 to 3/31/1975	4/1/1975 to 3/31/1976	4/1/1976 to 6/30/1976[b]	Total
New York City	$ 7,461	$17,216	$24,310	$6,078	$55,065
Other counties	2,218	5,984	7,263	1,816	17,281
Statewide costs for construction and drug treatment services	1,484	1,396	356	0	3,236
Total	$11,163	$24,596	$31,929	$7,894	$75,582

[a]Figures in this table do not include expenditure for administrative overhead or for the operation of the Division of Criminal Justice Services, also supported through EDDCP.

[b]Estimated as 25% of 1975-1976 expenditures.

Sources: Data furnished by Office of Court Administration, State of New York, and New York State Division of Criminal Justice Services.

The operating expenses of a typical court part in New York City are itemized in Table 10. Costs include all expenditures necessary to operate the courtroom, including judicial personnel, prosecutorial and defense counsel resources, supporting staffs, and overhead costs.

Use of the New Resources

At the time that the 1973 drug and sentencing law was enacted, it was expected to result in a substantial increase in the workload of the State's superior court system. In 1972 only six percent of dispositions obtained in drug cases in New York State superior courts had been obtained by trial. Since the 1973 law introduced mandatory prison sentences and put

52. A "part" is the term used to denote a working courtroom, including a judge and all other personnel required to operate a courtroom.

53. The upstate parts included one each in Albany, Niagara, and Onondaga counties, two in Suffolk, three each in Erie, Monroe, and Westchester, and four in Nassau County. Dutchess County has received non-court State funds under the program.

54. Parts were opened at various times in 1973, 1974, and 1975.

limitations on plea bargaining possibilities, this proportion was expected to increase substantially.

In addition, predicate felony offenders now faced mandatory State prison sentences that included substantial periods of parole ineligibility. They too were expected to demand trials in large numbers.

It was expected, therefore, that additional superior court parts would be

TABLE 10

TYPICAL COST OF A COURT PART IN NEW YORK CITY[a]

1. Judge	$ 49,000
2. Law secretary	30,000
3. Court clerks and law assistants	51,000
4. Security forces	93,000
5. Interpreters, reporters, stenographers, secretaries	64,000
6. Fringe benefits	78,000
7. Jury fees	50,000
8. District attorneys and support staff	86,000
9. Defense counsel and support staff	93,000
10. Rent, space, construction and supplies	30,000
11. Police laboratory, probation and local correction staff	36,000
Total	$660,000

[a]Figures rounded to nearest thousand dollars.

Sources: Items 1 through 7: Annual Budget, New York City Court Component, New York City Office of Court Administration, fiscal year 1974-1975; items 8 through 11: per part allocation of actual expenditures for New York City, New York State Division of Criminal Justice Services, fiscal year 1974-1975.

needed across the State to hear the increased number of trials expected. Governor Rockefeller had proposed the creation of 100 new judgeships when he testified on behalf of his drug law program before the Joint Codes Committee of the New York State Legislature,[55] but there was uncertainty about the number of new court parts that would be needed. Thomas McCoy, Director of the Judicial Conference, estimated that 147 new parts would be needed.[56] However, because there was no prior experience with a similar change in law in the State, it was not possible to judge the need accurately.

Theoretically, the new parts were provided to cope with the additional demand for court resources which the law was expected to generate. In practice, however, the new parts were assigned the entire drug caseload of the jurisdictions in which they were opened. This meant that the new parts

55. Albany, January 30, 1973: transcript p. 32.

56. Testimony before the Joint Codes Committee (of the N.Y.S. Senate and Assembly Codes Committees), Albany, February 16, 1973.

were meeting not only the additional demand generated by the new law, but also the demand that would have existed in any event. This proved a substantial benefit to existing court parts because it relieved them entirely from hearing drug cases.

How Much of the $76 Million Was Spent on Drug Cases?

By examining court calendars in New York City and by interviewing court officials in counties outside New York City, it was estimated that approximately $32 million of the $76 million spent on the 49 new parts throughout the State was spent to process drug cases. The remaining $44 million was spent on predicate felony cases and on general court business.

Drug cases accounted for approximately 42% of the cases the new parts handled in New York City during the 1974-1975 and 1975-1976 State fiscal years.[57]

TABLE 11

TOTAL EXPENDITURES FOR DRUG CASES IN EDDCP PARTS IN NEW YORK CITY[a]

Fiscal Year	Drug Cases as a Percentage of All Cases in EDDCP Parts	Total Expenditures for EDDCP Parts ($ thousands)	Expenditures on Drug Cases in the EDDCP Parts ($ thousands)
1973-1974	43%[b]	$ 7,461	$ 3,208
1974-1975	43	17,216	7,403
1975-1976	42	24,310	10,210
April-June 1976	N.A.	6,078	2,553[c]
Total		$55,065	$23,374

[a]Excludes certain construction costs and drug treatment service costs of approximately $4 million not allocated between New York City and other counties.

[b]No calendar sample available for 1973-1974. Assumed equal to the average of FY 1974-1975 and FY 1975-1976.

[c]Estimated as 25% of expenditures during 1975-1976.

N.A. Not available.

Sources: Table 9 and estimates by the Drug Law Evaluation Project.

An estimated $55 million was spent on the 31 parts opened in New York City between September 1973 and June 1976. Applying the 42% derived above to this $55 million yields an estimate of $23 million spent to process drug cases. The year-by-year expenditures are shown in Table 11.

57. Calendar samples were taken in each county of New York City in which new parts were opened to determine the percentage of drug cases in the new parts. The percentage calculated for each county was then weighted by each county's relative share of the new parts to arrive at the citywide figure for the percentage of drug cases in the new parts.

The fact that less than half of the total expenditure was for drug cases can be explained in part by the termination of a statewide agreement governing the assignment of cases to the new parts. When the parts were first opened, the State Administrative Judge and the Division of Criminal Justice Services agreed that 80% of the cases (indictments) assigned the new courts should be new drug and predicate felony cases, and that no more than 20% should be cases unrelated to the 1973 law. However, jurisdictions found it administratively burdensome to separate cases in the manner prescribed by this agreement. The 80% requirement was never monitored closely, and Governor Carey relaxed the restriction on the new courts on March 20, 1975.[58] After March 1975, the new parts were administratively indistinguishable from other parts of the court system, except that they continued to be financed solely by the State. Several jurisdictions, including New York City and Erie County (Buffalo), did continue to assign most drug cases to the new parts.

TABLE 12

TOTAL EXPENDITURES FOR DRUG CASES IN EDDCP PARTS OUTSIDE NEW YORK CITY[a]

Fiscal Year	Drug Cases as a Percentage of All Cases in EDDCP Parts[b]	Total Expenditures for EDDCP Parts ($ thousands)	Expenditures on Drug Cases in the EDDCP Parts ($ thousands)
1973-1974	58%	$ 2,218	$1,285
1974-1975	55	5,984	3,291
1975-1976	44	7,263	3,196
April-June 1976	N.A.	1,816[c]	799[c]
Total		$17,281	$8,572

[a]Excludes certain construction costs and drug treatment service costs of approximately $4 million not allocated between New York City and other counties.

[b]Individual counties weighted by relative share of new court parts operating in each county during each year.

[c]Estimated as 25% of expenditures during 1975-1976.

N.A.: Not available.

Sources: Table 9 and Drug Law Evaluation Project estimates.

In counties outside New York City, estimates of the percentage of drug cases handled each year in the new parts were obtained from administrative judges and court administrators. Their responses suggested that between 55% and 60% of the cases in the EDDCP parts in these counties were drug cases before April 1975. The percentage fell to between 40% and 45% after April 1975 (Table 12).

58. Press Release of the Governor, March 20, 1975.

Applying these estimates to the $17 million spent on the EDDCP parts outside New York City produces a cost of $8.6 million which can be attributed directly to new law drug cases.

A Retrospective Estimate of the Number of Court Parts Required to Implement the Drug Provisions of the 1973 Law

As noted in Table 9, $76 million was spent on new court resources between 1973 and June 1976, and $32 million of that sum was attributable to the adjudication of drug cases.[59] Another perspective on costs can be obtained by posing the question: if resources were to be allocated today, with the benefit of hindsight, how many courts parts would be required to process drug cases under the 1973 law?

Three factors are of prime importance in making such an estimate: first, under the 1973 law, the statewide trial rate in drug cases increased from 6% in 1972 and 1973 to over 16% in 1975 and the first half of 1976.[60] Second, the time it took to dispose of a drug case increased by approximately 70%, from an estimated 1.0 days per disposition under the old law to 1.7 days under the new law.[61] These two factors required the addition of court resources because they represented an increased demand on judicial time. On the other hand, the statewide number of drug indictments declined substantially under the new law, so that while each case took longer to process, there were fewer cases.

An estimate of the increase in court resources required to process all new law drug cases appears in Table 13. It accounts for both the increase in the time it took to dispose of a case under the 1973 law and the large decline in the total number of indictments. The net result was that the 49 new court parts furnished to manage new law cases were more than sufficient to cover the courts' entire workload of new law drug cases. Those cases

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59. The $32 million does not include the cost of processing drug cases in the pre-existing courts.

60. New York State Division of Criminal Justice Services, Forms D. (Form D, "Outcome of Procedures in Supreme and County Courts," is the form filed monthly by the superior courts to record dispositions of indictments.)

61. Disposition time under the old law was estimated by dividing the total number of court days by the number of dispositions in all cases (drug and non-drug) in 1972 in New York City and Albany, Dutchess, Erie, Monroe, and Nassau counties. The result was 1.0 days per disposition. The change in disposition time between 1972 and 1975-76 was estimated by comparing the elapsed times between indictment and conviction for drug cases during the two time periods. These data, which yielded an increase of 70%, were derived from the Project's survey of convictions under the old and new drug laws. (See "Sentencing Patterns Under the 1973 New York State Drug Law," *Staff Working Papers*, No. 4.) The 70% increase in elapsed time was then applied to the 1.0 days per disposition to arrive at the 1.7 days per disposition in 1975-76. (A second estimate, 1.5 days per disposition of drug cases in Manhattan during 1975-76, provides some confirmation of this procedure. See "The Effects of the 1973 Drug Law on the New York State Courts," *Staff Working Papers*, No. 3.)

should have required the full-time services of 37 parts per year.

The 37 court parts per year actually required represents an increase of only six parts per year over the 31 parts required statewide under the old drug law. The remaining 43 parts were indeed absorbed into the judicial system, but apparently to carry out business not directly associated with the drug provisions of the 1973 law. Much of their work was devoted to cases which would have occurred even under the old law. Some of their time undoubtedly went into the higher trial rate and longer processing time in cases involving defendants with a prior felony conviction. However, predicate felony dispositions accounted for only seven percent of statewide dispositions of felony indictments during the period between January 1, 1974 and June 30, 1976. The fact that only six of 49 new parts were needed to handle the increase in drug case activity generated by the new law strongly implies that the difficulty experienced by the courts in disposing of new law drug cases was not due to a deficiency of courtroom resources.

At 1976 costs, the 43 remaining parts required the expenditure of $27 million a year. They represented a 42% increase in the capacity of the State's superior criminal courts over the 102 court parts which were in operation during most of 1973. Thus the State court system as a whole received a large benefit which was not explicitly intended when the 1973 law was enacted.

TABLE 13

COURT RESOURCES REQUIRED TO PROCESS DRUG INDICTMENTS, STATEWIDE

	Old Law (1972-1973)	New Law (1974-June 1976)
Total drug indictments (Statewide)	13,479	11,930
Drug indictments per year	6,740	4,772
Court part days per disposition	1.0	1.7
Court part days needed per year	6,740	8,112
Court parts needed per year	31	37
Additional court parts needed	—	6
Additional court parts provided	—	49

Sources: New York State Division of Criminal Justice Services and Drug Law Evaluation Project estimates.

Some of the Fears Voiced by Critics of the 1973 Law Were Not Realized.

Youth and First Offenders

Opponents of mandatory prison sentences were concerned by the possibility that the burden of this provision would fall largely on young offenders and individuals without previous criminal involvement. The sentencing discretion usually afforded these two groups, it was argued, would not be possible if mandatory sentencing existed.

A survey[62] of defendants convicted of drug offenses in the State's superior courts found, however, that under the new law these two groups continued to receive prison or jail sentences at a far lower rate than the typical offender under the new law. Under the old law, though one-third of all defendants convicted of drug offenses in superior court had received prison or jail terms, only 18% of defendants between the ages of 16 and 18 had been incarcerated. (Cases involving offenders under 16 years of age are processed in the Family Court rather than in the adult criminal justice system.) Similarly, only 18% of defendants without prior felony arrests had received prison or jail sentences.

The preferences accorded these two groups of offenders were substantially maintained during the first two years the 1973 law was in effect. In 1974 and 1975, only 15% of offenders in the 16-18 age group went to prison or jail after a superior court conviction (Table 14). The

TABLE 14

THE LIKELIHOOD OF PRISON OR JAIL SENTENCES FOR THE YOUNG AND FIRST OFFENDERS AFTER A SUPERIOR COURT DRUG CONVICTION, NEW YORK STATE[a]

Type of Offender	Old Law (1972-1974)	New Law (1974-1975)
16-18-year-olds	18.1%	15.3%
No prior felony arrest	17.8	23.5
All offenders	33.5	40.0

[a]The change in the likelihood of prison or jail sentences among 16-18-year-olds is not significant at the 5% level. The two other changes in likelihood of prison or jail sentences are significant at the 5% level.

Source: "Sentencing Patterns Under the 1973 New York State Drug Laws," *Staff Working Papers*, No. 4.

percentage of first offenders who received prison or jail sentences increased from 18% to 24% during this period, while the percentage of all offenders sentenced to prison or jail increased from 34% to 40%.

Partly because sentencing preferences were maintained for these groups, fewer young people and first offenders went to prison during 1974 and 1975 under the new law than during the two years immediately preceding the law (Table 15).

Even if sentencing discretion had not been maintained for these groups, the number of young and first offenders sentenced to prison or jail still would have declined, because the total number of prison and jail sentences fell dramatically in 1974 and 1975. The reasons for this decline are discussed in Section II below.

62. A survey by the Drug Law Evaluation Project described in *Staff Working Papers*, No. 4.

TABLE 15

ESTIMATED NUMBER OF YOUNG AND FIRST OFFENDERS INCARCERATED AFTER A SUPERIOR COURT DRUG CONVICTION, NEW YORK STATE

Type of Offender	Old Law (1972-1973)	New Law (1974-1975)
16-18-year-olds	234	108
No prior felony arrest	883	540
All offenders	3,594	1,666

Source: "Sentencing Patterns Under the 1973 New York State Drug Laws," *Staff Working Papers*, No. 4.

The sentencing preference that young people enjoyed during 1974 and 1975 apparently occurred because Youthful Offender status was extended to many of them. New York State law provides that an offender between the ages of 16 and 18 may be adjudicated as a Youthful Offender and be placed on probation if he has not been previously sentenced for a felony. When the 1973 law introduced mandatory sentencing, there was a question about whether it would be permissible to accord this status to youths indicted for crimes carrying mandatory lifetime sentences. However, in January 1975, the First Judicial Department, which has jurisdiction in Manhattan and the Bronx, affirmed a 1974 lower court decision which held that Youthful Offender status applied to all youths regardless of charge.[63] Later in 1975, the Legislature amended the Youthful Offender provisions specifically to include youths indicted for class A-III felonies, the bottom category of class A felonies, and the one in which the great majority of youthful and first offenders fell.[64]

The preference granted first offenders was due in part to the fact that many first offenders also qualified as Youthful Offenders.

Youths in the Heroin Distribution System

There has been much discussion recently (early 1977) among law enforcement officials, as well as in the press, about the emergence of youths as active members of the heroin distribution system in New York City. There have been increasingly frequent citations of youths below the age of 16 engaged actively in the heroin trade. It is thought that these youths are recruited by adult heroin merchants because youths under 16 years are exempt from the adult criminal justice process and do not fall within the penalty provisions of the 1973 law. It is further alleged that youths between

63. *People v. Brian R.*, 356 N.Y.S. 2nd 1006 (1974), *aff'd* 47 A.D. 2d 599, 365 N.Y.S. 2d 998 (1975).

64. 1975 *N.Y.S. Laws*, ch. 832.

the ages of 16 and 18, who may be accorded Youthful Offender status and thus escape the heavy penalties of the 1973 law, have also been recruited in large numbers into the heroin trade.[65]

While no direct measures of such activity exist, arrest statistics might provide an indication of changing age distribution patterns. These data do not indicate a striking rise in the number of youths arrested for heroin felonies under the new law.

Historically, youths under 16 have accounted for a very small share of all heroin felony arrests in New York City. In 1970, during the height of the heroin epidemic, only 302 of 22,603 heroin felony arrests in New York City involved youths under the age of 16, a share of only 1.3%. By contrast, this group accounted for 15% of the 67,225 non-drug felony arrests that year.

Beginning in 1974 however, the proportion of youths under 16 arrested for heroin felonies began to increase. In 1976 this group accounted for 143 of the 4,968 heroin arrests that occurred in New York City, a 2.9% share. While the numbers involved are quite small, the increasingly larger share of all heroin arrests accounted for by this group (Table 16) is cause for concern.

TABLE 16

YOUTHS ARRESTED FOR HEROIN FELONIES IN NEW YORK CITY

	1970	1972	1974	1976
Total arrests	22,603	7,450	3,854	4,968
Arrestees under 16 years old				
Number	302	80	90	143
Percentage of all arrests	1.3%	1.1%	2.3%	2.9%
Arrestees 16-18 years old				
Number	2,795	775	483	674
Percentage of all arrests	12.4%	10.4%	12.6%	13.6%

Source: New York City Police Department, *Statistical Reports*.

The proportion of heroin felony arrests involving youths between the ages of 16 and 18 also increased marginally between 1972 and 1976 (Table 16). The rise from 13% to 14% between 1974 and 1976, however, is not enough to estabish that this change is related to the Youthful Offender status granted to defendants in this age group in 1975.[66]

65. Jerome Hornblass, Addiction Services Agency, letter to Drug Law Evaluation Project, January 3, 1977, based on the Agency's survey of judges and practitioners; survey reported in *The New York Times*, January 2, 1977, p. 1.

66. In non-drug felonies, there was no apparent trend between 1972 and 1976 in the percentage of arrests involving these two groups, despite year-to-year variation. The under 16 group accounted for 14.8% of non-drug felony arrests in 1972 and 16.5% in 1976. The 16 to 18 group accounted for 20.8% in 1972 and 20.1% in 1976. Many more people in both age groups were arrested for non-drug felonies than for drug felonies.

Informants

Most informants are defendants in pending prosecutions to whom police and prosecutors have offered concessions for various forms of cooperation.[67] Their cooperation can range from identifying other dealers operating at the same level of the drug distribution system to testifying against their own drug sources.

When police observe drug traffic occurring in the open, they can make an arrest without the assistance of an informant. But in the usual case where drug trafficking is more surreptitious, and when the police want to move beyond street-level transactions to build a case against distributors, informants become an indispensable part of the case development process. Informants are employed in these cases to identify dealers and distributors and to arrange introductions for police undercover agents who want to buy drugs and build a case that can be prosecuted successfully.

As originally proposed by the Governor, the 1973 law did not permit any plea bargaining at all. The State District Attorney's Association, which opposed the original bill for this reason, predicted that defendants would have no incentive to become informants.[68] The law that was enacted, however, permitted limited plea bargaining. It also contained a provision designed to make it easier for police and prosecutors to recruit informants: a defendant convicted of a class A-III felony could receive a sentence of lifetime probation instead of a prison sentence if he became an informant in another drug felony case.[69]

This combination of stiff sentences, limited plea bargaining, and the opportunity for lifetime probation instead of a long prison sentence evidently proved to be an effective method of eliciting cooperation from drug defendants. Police and prosecutors across the State reported no problems in recruiting informants at the several levels of the drug distribution system. District attorneys uniformly praised the 1973 law for giving them an effective method for moving "up the ladder" of the distribution system. An assistant district attorney in charge of drug prosecution in a suburban county observed that many defendants in old law drug cases had been reluctant to cooperate and provide information after speaking with their defense lawyers; under the 1973 law, he said, large

67. In testimony before the Joint Codes Committee considering the enactment of the drug law, Frank Rogers, then Assistant District Attorney, Special Narcotics Courts, New York County, estimated that virtually all the informants his office was using were "working off a case," i.e., were defendants cooperating in return for favorable treatment in cases pending against them (New York City, February 8, 1973, transcript p. 123).

68. John O'Mara, President, State District Attorneys' Association, testifying before the Joint Codes Committee, Albany, February 6, 1973 (transcript p. 132).

69. PL 60.03 (6), 1973 *N.Y.S. Laws*, ch. 278 (2).

numbers of defendants were willing to become informants on the advice of counsel.

Defendants indicted for low-level narcotics sales (a class A-III felony) could not, under the 1973 law, have their charge reduced. In addition to using the informant probation sentence, however, some prosecutors agreed to seek short minimum sentences for defendants who cooperated. Since the minimum penalty for a low-level sale ranged between one year and eight and one-third years, defendants could benefit substantially by becoming informants.

Defendants charged with the more serious class A-I or class A-II offenses were permitted to engage in limited plea bargaining. For example, during 1974 and 1975, 65% of the defendants indicted for class A-I drug offenses who eventually pled guilty to some offense, and 86% of those indicted for class A-II drug felonies who pled guilty, did so to a class A-III charge. Since cooperation is the major concession a defendant can make (aside from abandoning the right to a jury trial), and since prosecutors actively seek cooperation in order to build other cases, it is likely that information provided by defendants played an important role in these charge reductions. The minimum prison term for a class A-I offense ranged between 15 and 25 years. Thus, a defendant could achieve as much as a 24-year reduction in his minimum sentence by becoming an informant and pleading guilty to an A-III charge.

As noted above, convicted class A-III offenders who provided assistance in the investigation or prosecution of a drug felony could receive lifetime probation instead of a mandatory prison sentence. This provision was used sparingly. In New York City, only 55 persons received lifetime probation during the 34 months the 1973 law was in effect.[70] Precise data were not available in upstate counties, but district attorneys in these counties report that lifetime sentences were infrequent.[71]

Prison Sentences

It was reasonable to expect that implementation of the 1973 law would bring about large numbers of sentences to State prisons. In 1972, there had been 751 such sentences in drug cases, a number which represented only 12% of all convictions obtained in drug cases in superior courts.[72] The

70. Data furnished by the New York City Department of Probation.

71. For example, in Erie County, the assistant district attorney who supervised drug cases in that county estimated in January 1977 that only twelve such sentences had been passed in Erie County since September 1973 (conversation with Drug Law Evaluation Project at Buffalo, N.Y., January 14, 1977).

72. Another 1,288 defendants were sentenced to local jail terms in 1972. This section concerns sentences to State prisons alone.

introduction of mandatory prison sentences threatened to increase that number substantially.

As it developed, the prison population did increase substantially between 1973 and 1976, but the new drug law was not responsible for the increase (Table 17).

TABLE 17

INMATES UNDER CUSTODY IN NEW YORK STATE PRISONS

	Total	Drug	Drug as a Percent of Total
End of year			
1972	12,444	1,328	10.7%
1975	16,074	1,744	10.8%
1976	17,749	N.A.	N.A.
1972-1975 increase			
Number	3,630	416	11.5%
Percent	29.2%	31.3%	—

N.A.: Not available.

Source: State of New York, Department of Correctional Services, *Characteristics of Inmates Under Custody 1972* and *Characteristics of Inmates Under Custody 1975* (Albany 1972, 1975); State of New York, Department of Correctional Services, *idem*, personal communication, February 1977.

Between 1972 and 1975, there was virtually no change in the percentage of drug offenders in prisons because new commitments of drug and non-drug offenders grew at the same rate. In 1976, however, commitments of drug offenders rose substantially (Table 18). Drug law offenders accounted for 15.5% of all State prison commitments that year, an increase of nearly 25% over their share in previous years. Thus, it is likely that the percentage of drug law offenders under custody had grown by the end of 1976.[73]

TABLE 18

NEW COMMITMENTS TO STATE PRISONS

	Total	Drug	Drug as a Percent of Total
Year			
1972	5,971	751	12.6%
1975	7,482	933	12.5%
1976	8,110	1,260	15.5%
1972-1976 increase			
Number	2,139	509	23.8%
Perentage	35.8%	67.8%	—

Source: State of New York, Department of Correctional Services, *Characteristics of New Commitments* (Albany 1972, 1975, 1976).

73. Data covering the year-end 1976 population were not available.

A primary reason for the modest rise in the commitment of drug law violators until 1976, relative to all commitments, was the delay in processing new law drug cases through the courts (see below, pp. 103-108). In the absence of those delays, far more prison sentences would have occurred during 1974 and 1975.

In view of the 1976 amendment to the drug law, under which offenders indicted for class A-III crimes no longer face strict plea bargaining restrictions and the certainty of State prison terms, it is unlikely that the rise in prison sentences experienced in 1976 will be sustained. On the other hand, an increase in sentences to local jails (where offenders serve terms of one year or less) is expected to occur.

II

What Accounts for the Disappointing Results of the 1973 Drug Law?

The Criminal Justice Process as a Whole Did Not Increase the Threat to the Offender.

The mandatory sentencing provisions of the 1973 law directly affected only one final stage of the adjudication process—sentencing convicted defendants in a superior court. However, crimes which result in a felony court conviction represent only a small fraction of crimes actually committed. Thus, a law which focuses on convicted offenders has a limited potential for increasing an offender's risk of eventual incarceration.

Under the new drug law, the risk of incarceration facing a drug offender convicted in superior court increased from 33% in 1972 to about 55% in 1976. However, this large rise was largely offset by other changes which occurred in the adjudication process. The net result was that the risk of incarceration facing persons arrested for a new law drug felony remained substantially unchanged from the risk they had faced under the old law. In 1972 about 11% of felony drug arrests resulted in a prison or jail sentence in superior court; in early 1976, the proportion was an identical 11%.

Chart 15 gives dispositions likely to occur as a result of the 8,166 felony drug arrests actually made across the State during the first half of 1976. According to an analysis of indictments and dispositions during the first half of 1976,[1] only 2,073 (25%) of those arrests were likely to result in an indictment for a drug felony. A total of 1,663 of those indictments (80%) would result in a superior court conviction. Of these, 919 (55%) would lead to incarceration in either State prison or local jails. A total of 422 jail

1. The indictments in these cases had typically occurred before 1976.

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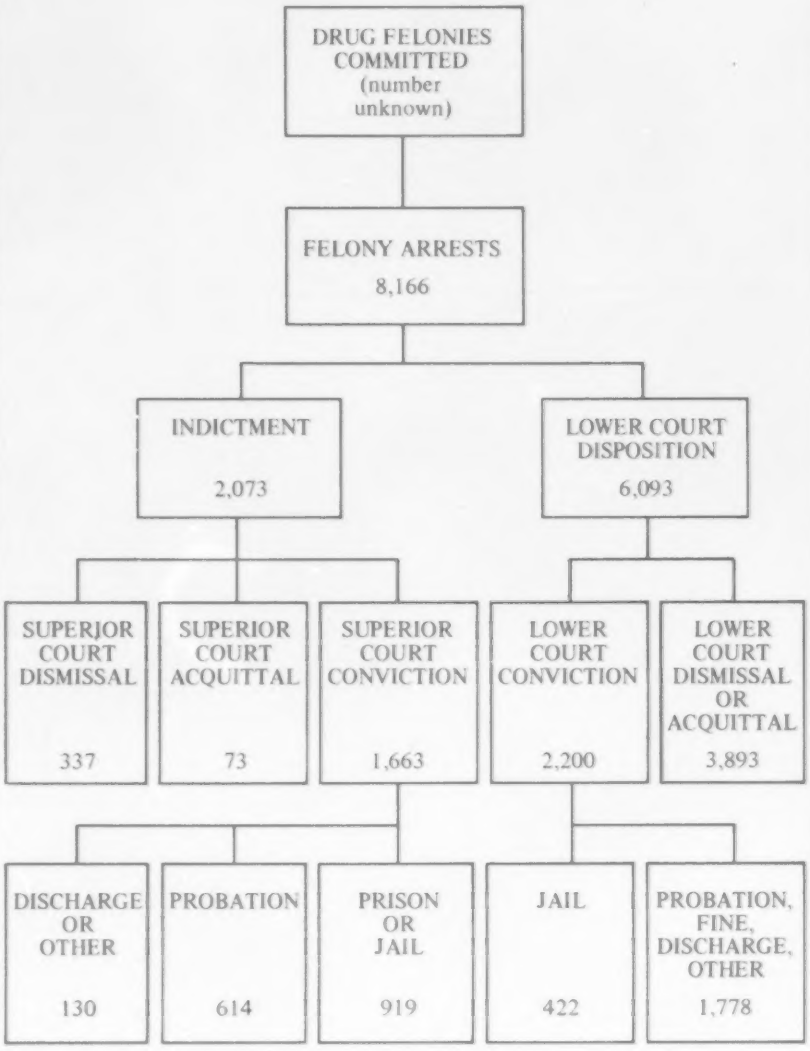
CHART 15
PROJECTED DISPOSITIONS RESULTING FROM DRUG LAW FELONY ARRESTS IN NEW YORK STATE, JANUARY-JUNE, 1976



Sources: New York State Division of Criminal Justice Services, *Felony Processing Report*, January-June 1976; Office of Court Administration, N.Y.C. Courts, *Filings, Dispositions, and Sentences*, 1975.

sentences would result from the 6,093 arrests disposed of in lower courts.[2]

As Chart 15 suggests, developments at several points in the judicial process can affect the final outcome of felony cases. The developments that most affected the way in which the 1973 law actually operated are described in the following sections, which examine each stage of the court process in sequence.

Arrest

There are no accurate means of estimating the risk of arrest facing drug offenders. For crimes such as burglary and robbery, complaints by victims to the police are often used as a rough estimate of the total number of crimes actually committed. No comparable data exist for estimating the total number of drug crimes committed, because drug crimes do not usually result in complaints to the police. However, in the absence of complaints it is reasonable to assume that drug offenders run a very low risk of being arrested for any single offense.

When combined with the finding that illegal drug use itself did not decline under the 1973 law, the data in Table 19 suggest that drug offenders in New York State faced no greater risk of being arrested under the new law than under the old. The annual number of felony drug arrests fell below its 1972 level, and despite year-to-year fluctuation did not exhibit any trend after 1973. Non-drug felony arrests, on the other hand, increased after 1972, as crime rates rose sharply.

TABLE 19

FELONY ARRESTS IN NEW YORK STATE, 1972-1976

	1972	1973	1974	1975	Jan.-June 1976
Drug arrests	19,269	15,594	17,670	15,941	8,166
Non-drug arrests	105,607	101,624	108,222	111,154	57,147

Source: New York State Division of Criminal Justice Services, *Felony Processing Reports*.

Because the 1973 law reclassified low-level narcotic drug crimes as high degree felonies, there was some expectation that police departments across the State would attach a higher priority to these offenses and step up their efforts to arrest drug law offenders. Conversations with police officials throughout New York State failed, however, to identify widespread changes in drug enforcement policies after the 1973 law took effect.

2. Data on lower court dispositions are not available for the State as a whole. The projections on Chart 15 are based upon statistics of lower court dispositions in New York City during 1975, the most recent complete year for which these data were available.

The statewide decline in drug arrests after 1972 was due in large part to the decline in New York City (Table 20). In the rest of the State, drug arrests remained relatively stable after 1972.

TABLE 20

FELONY ARRESTS IN NEW YORK CITY, 1970-1976

	1970	1971	1972	1973	1974	1975	Jan.-June 1976
Drug arrests	26,378	20,473	11,259	7,408	7,439	7,498	4,611
Non-drug arrests	57,573	71,248	73,780	68,798	77,545	77,666	41,261

Source: New York City Police Department, *Statistical Reports*.

The sharp drop in New York City was due largely to a change in policy by the City's Police Department. The Department had the opportunity, because of the large volume of street-level drug activity in New York City, to make large numbers of street-level arrests under the new drug law. For historical reasons, however, it did not elect to do so.

In 1969, the Department had implemented a policy similar to the one implied by the new law. Large numbers of low-level drug arrests had been encouraged, and the number of felony drug arrests had risen from 7,199 in 1967 to 26,378 in 1970. In 1971, however, Police Commissioner Patrick Murphy abandoned this policy because (a) only a small percentage of the arrests were resulting in prison or jail sentences and (b) the mass arrest policy did not appear to be having a significant impact on the drug traffic.[3] In the Department's view, the mass arrest policy was also creating serious workload problems for the courts. Immediately after the change in policy, arrests fell sharply; in 1973 there were only a little more than one-third as many as two years earlier.

The decision to de-emphasize street level arrests occurred at about the same time that heroin use was reaching a peak. The fact that narcotics deaths and hepatitis dropped between 1971 and 1973 indicates that arrest activity would have declined somewhat even without the change in Police Department policy.

According to Donald Cawley, New York City Police Commissioner when the 1973 law became effective, the Department decided not to change its enforcement policies in response to the 1973 legislation. The Department continued to focus its enforcement activities on the middle

3. Statement by Police Commissioner Patrick V. Murphy before the New York State Commission of Investigation (April 20, 1971), p. 4.

and upper levels of drug distribution rather than upon street-level drug activity.[4]

The decline in felony drug arrests in New York City between 1970 and 1973 was due mainly to a drop in the number of heroin arrests (Table 21). Street-level arrests of heroin offenders had been chiefly responsible for the sharp increase in drug arrests in 1969 and 1970. In the context of relatively stable levels of heroin use between 1973 and 1976, the parallel stability in arrests implies that the risk of arrest facing narcotics law offenders did not change very much after the new law took effect.

TABLE 21

FELONY HEROIN ARRESTS IN NEW YORK CITY, 1970-1976

1970	1971	1972	1973	1974	1975	Jan.-June 1976
22,301	16,445	7,370	3,728	3,764	3,937	2,341

Source: New York City Police Department, *Statistical Reports.*

In the first six months of 1976, arrests for drug offenses in New York City increased once again. Since no explicit change in enforcement policy had occurred which sought to increase narcotics arrests, this increase may simply have happened because drugs were more widely available during this period.

Bail

None of the provisions of the 1973 drug law had a direct bearing on bail practices. Indeed, there are Constitutional guarantees to bail which are immune to legislative action. However, because the law did create long prison terms for many drug offenses, it might have induced some defendants to jump bail rather than face the higher penalties. If so, judges might have responded by setting higher bail, at least for those offenders who were judged the poorest risks.

The sparse data that are available indicate just the opposite trend. In Manhattan, lower bail was set for drug felony defendants under the new law than under the old, and persons facing drug felonies were significantly more likely to be paroled (i.e., released on their own recognizance) in the post-law period than in the pre-law period (Table 22). Unfortunately, no

4. "The Effects of the 1973 Drug Laws on the New York State Courts," *Staff Working Papers*, No. 3, contains a discussion of some of the factors influencing police decision-making on drug law enforcement.

TABLE 22

BAIL FOR DRUG FELONY DEFENDANTS AT ARRAIGNMENT IN MANHATTAN CRIMINAL COURT[a,b]

	Released on Recognizance (Without Bail)	$100-$500	$501-$1500	Over $1500	Other[c]
Pre-law (January 1972-March 1973)	22%	12%	27%	39%	—
Post-law (January 1974-December 1975)	38%	17%	15%	28%	2%

[a]The data were collected from arraignment records of felony cases in Manhattan Criminal Court for a pre-law period (January 1972 to March 1973) and a post-law period (January 1974 to December 1975) as part of the study of crimes attributable to narcotics users. The pre-law sample consisted of 59 cases and the post-law sample of 40 cases. The bail distributions before and after enactment of the new law were found to be statistically different at the 5% significance level, using the chi-square test.

[b]Low bail is rarely set for felonies. Either defendants are released without bail or high bails are set. There were no cases in the sample with bail of less than $100, and 95% of the defendants in the $100-$500 category received bail of $500.

[c]Includes defendants remanded to hospitals for medical (including psychiatric) reasons, and cases with unknown bail status.

Source: "Crime Committed by Narcotics Users in Manhattan," *Staff Working Papers*, No. 2.

data are available to measure the frequency of bail jumping under either the old or the new law.

Drug case defendants were not the only ones who benefited from lower bail during the post-law period. Table 23 shows that lower bail also was set for many defendants charged with non-drug felonies.

TABLE 23

BAIL FOR NON-DRUG FELONY DEFENDANTS AT ARRAIGNMENT IN MANHATTAN CRIMINAL COURT[a]

	Released on Recognizance (Without Bail)	$100-$500	$501-$1500	Over $1500	Other[b]
Pre-law (January 1972-March 1973)	30%	19%	22%	23%	6%
Post-law (January 1974-December 1975)	38%	15%	23%	19%	5%

[a]The pre-law sample consisted of 360 cases, and the post-law sample of 371 cases. The two bail distributions were found to be statistically different at the 5% significance level, using the chi-square test.

[b]Includes defendants remanded to hospitals for medical (including psychiatric) reasons, and cases with unknown bail status.

Source: "Crime Committed by Narcotics Users in Manhattan," *Staff Working Papers*, No. 2.

The increase in the number of drug defendants released on their own recognizance thus appears to have been part of a broader trend. Bail for drug law defendants was higher than bail for non-drug defendants in the pre-law period, but the difference between the two groups diminished substantially in the post-law period. These data indicate that the drug law did not result in higher bail for felony drug defendants.

Eight narcotics part judges in Manhattan and Brooklyn Supreme Courts were asked their impressions of bail practices under the new law. They reported that the law did not affect bail practices, although most felt that heroin users probably received higher bail than non-users facing the same charge.[5]

The frequency with which suspected offenders are released on bail does not go unnoticed by the public. It is often presented in the press and perceived by the public as symbolic of the weakness of penal sanctions. When drug dealers return to the street shortly after arrest, community residents see it as proof of an inability of the criminal justice system to curtail open drug sales.[6] Drug program counselors in Harlem and East Harlem, as well as public officials from these and other Manhattan neighborhoods, noted that residents became skeptical about the 1973 drug law partly because known drug dealers quickly reappeared on the streets and continued to sell drugs after having been arrested.

Indictment

The plea bargaining restrictions and mandatory sentencing provisions of the new law applied to defendants indicted for drug felonies. The proportion of drug felony arrests that resulted in an indictment declined steadily after the 1973 law took effect. In 1972, about 61% of all felony drug arrests were disposed of in lower court proceedings, while the remaining 39% of arrests resulted in an indictment. In 1976, only 25% of drug felony arrests led to an indictment (Table 24).

The decline in indictments was especially evident in New York City (Table 25). Between 1972 and 1976, the indictment rate for drug offenses in counties outside New York City fell from 39.2% to 31.2% compared to the 39.0% to 23.9% decline that occurred in New York City.

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5. The study of felony cases in Manhattan Criminal Court showed that narcotics users facing any felony charge were significantly more likely to face higher bail than non-users facing the same charge. This was true in both the pre-law and post-law periods.

6. Sterling Johnson, Special Narcotics Prosecutor for New York City, testimony in: U.S. House of Representatives Select Committee on Narcotics Abuse and Control, Ninety-Fifth Congress, *New York Hearing: Drug Law Enforcement, Second Interim Report* (Washington, D.C.: U.S. Government Printing Office, 1977).

TABLE 24

DRUG INDICTMENTS IN NEW YORK STATE, 1972-1976

	1972	1973	1974	1975	Jan.-June 1976
Felony arrests	19,269	15,594	17,670	15,941	8,166
Indictments[a]	7,528	5,969	5,791	4,283	2,073
Indictment rate	39.1%	38.3%	32.8%	26.9%	25.4%

[a]Indictments refer to numbers of defendants indicted. Figures for 1974, 1975 and 1976 are estimates by the Drug Law Evaluation Project.

Sources: New York State Division of Criminal Justice Services, *Felony Processing Reports* and Forms A and C.

TABLE 25

DRUG INDICTMENTS IN NEW YORK CITY, 1972-1976

	1972	1973	1974	1975	Jan.-June 1976
Felony arrests	11,259	7,408	7,439	7,498	4,611
Indictments	4,388	3,278	2,815	2,250	1,100
Indictment rate	39.0%	44.2%	37.8%	30.0%	23.9%

Sources: New York State Division of Criminal Justice Services, *Felony Processing Reports* and Forms C and D; New York City Police Department, *Statistical Reports*.

These (statistically significant) declines in the frequency of indictment cannot be attributed to the new law alone, because a comparable decline occurred in the indictment rate for non-drug felonies during the same period, both in New York City and in the State as a whole (Table 26). Nevertheless, the fall in indictments served to limit the applicability of the 1973 law to a smaller group of defendants than would otherwise have been subject to the law.

TABLE 26

INDICTMENT RATES FOR NON-DRUG FELONIES, 1972-1976[a]

	1972	1973	1974	1975	Jan.-June 1976
Statewide	33.5%	28.8%	24.6%	25.2%	22.0%
New York City	33.5%	27.5%	20.3%	19.0%	14.6%

[a]Indictment figures for 1974, 1975 and 1976 are estimates by the Drug Law Evaluation Project.

Sources: New York State Division of Criminal Justice Services, *Felony Processing Reports* and Forms C and D; New York City Police Department, *Statistical Reports*.

One policy, adopted in early 1976, was directly related to the law and lowered the number of drug law indictments in New York City. The Special Narcotics Prosecutor for New York City began offering some drug defendants originally charged with a class A-III offense a chance to plead guilty to a misdemeanor and thus avoid indictment.[7] Prosecutors elsewhere in the State did not report any change in indictment decisions in response to the plea bargaining restrictions of the 1973 law.

At the same time, factors unrelated to the new law contributed to the decline in indictments. For example, beginning in 1972, a number of counties introduced new screening programs for felony offenses. These programs were intended to reduce the frequency of indictment in cases where the likelihood of obtaining a felony conviction was not high.

Furthermore, there has been a marked reduction in emphasis in recent years on the prosecution of cases involving marijuana. Penalties for marijuana offenses were not increased by the 1973 law, and district attorneys across the State reported that they were less prone to seek indictments in these cases after 1973 than previously. It is likely that the decline in drug indictments was due in large part to this change, and that indictments in cases involving heroin or other hard drugs did not fall as much as the total suggests.

Conviction

Convictions as a Percentage of Indictments

Even out of the smaller number of indictments, there was a decline under the 1973 law in the rate at which convictions were obtained in drug cases in superior court (Table 27). In 1972, about 86% of the State's drug indictments resulted in conviction. By 1976, this figure had fallen to 79%. There was no comparable decline in the conviction rate in non-drug felony cases during this period.

The statewide decline in the conviction rate for drug offenses in superior court was due solely to a decrease in the conviction rate in New York City, where it fell from 91.7% in 1972 to 81.7% in 1976. That was due mainly to an increase in dismissals and not to an increase in the likelihood of acquittals by jury. Dismissals in drug cases in New York City rose from 6.8% of dispositions in 1972 to over 20% during 1975 (Table 28). In the first half of 1976, dismissals declined again to about 14% of dispositions. Apparently, motions made by defense attorneys to have drug indictments dismissed (see below, p. 107) met with increasing success under the new law.

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7. Office of Prosecution, Special Narcotics Courts, New York City, internal memorandum, February 6, 1976.

TABLE 27

CONVICTIONS OBTAINED IN FELONY DRUG CASES IN NEW YORK STATE SUPERIOR COURTS, 1972-1976

	1972	1973	1974	1975	Jan.-June 1976
Indictments disposed of[a]	6,991	5,580[c]	3,939	3,989	2,173
Convictions[b]	6,033	4,739[c]	3,085	3,147	1,724
Conviction rate	86.3%	84.9%	78.3%	78.9%	79.3%
Conviction rate in non-drug cases	87.6%	N.A.	84.7%	85.1%	85.3%

Note: The 1974-1976 data include dispositions of indictments obtained under the old law. Drug cases continued to be processed under the old law if the offense had occurred prior to September 1, 1973.

[a]Excludes indictments disposed of by consolidation or abatement.

[b]Convictions on drug charges only.

[c]Estimates by the Drug Law Evaluation Project.

N.A.: Not available.

Sources: New York State Division of Criminal Justice Services, *Felony Processing Reports* and Forms D.

TABLE 28

DISMISSAL RATE IN DRUG CASES IN NEW YORK CITY SUPREME COURTS[a]

1972	1973	1974	1975	Jan.-June 1976
6.8%	6.9%	16.7%	21.3%	13.7%

[a]Dismissals as a proportion of dispositions. Cases disposed of by consolidation or abatement were not counted as dispositions when calculating dismissal rates.

Sources: New York State Division of Criminal Justice Services, *Felony Processing Reports* and Forms D.

In the first half of 1976, there was only one superior court conviction for every five felony drug arrests; in 1972 the ratio had been one to three. Thus there was a dilution in the number of cases in which the strict sentencing provisions of the 1973 law could be applied.

Total Convictions

The total number of drug convictions obtained in New York State superior courts fell by almost half between 1972 and 1975 (Table 27). In part, the decline (from 6,033 convictions in 1972 to 3,147 convictions in

1975) was due to the decrease in the number of felony drug arrests noted above, and to the drop in the indictment rate and conviction rate for drug offenses. Another significant factor, described below (pp. 103-108), was the slowdown in the rate at which drug indictments were disposed of by the courts after 1973.

Prison Terms

For those drug law offenders who were convicted, the mandatory sentencing provisions of the 1973 law resulted in a significant increase in the likelihood of a State prison or local jail term. By law, all offenders sentenced to terms of more than one year were sent to State prisons; offenders incarcerated for periods of up to one year were sent to local jails. One-third of all offenders convicted in superior court were incarcerated in 1972; by the first half of 1976, over half were being sentenced to prison or to jail (Table 29). At 55%, the incarceration rate for drug law offenders was virtually identical to the 54% incarceration rate faced by all offenders convicted in superior courts (for drug and non-drug crimes combined).

TABLE 29

PRISON AND JAIL SENTENCES IMPOSED ON DRUG OFFENDERS IN NEW YORK STATE SUPERIOR COURTS, 1972-1976

	1972	1973	1974	1975	Jan.-June 1976
Convictions	6,033	4,739	3,085	3,147	1,724
Prison and jail sentences	2,039	1,555	1,074	1,369	945
As a percentage of convictions	33.8%	32.8%	34.8%	43.5%	54.8%
As a percentage of arrests	10.6%	10.0%	6.1%	8.6%	11.6%

Note: The 1974-1976 data include dispositions of indictments obtained under the old law. Drug cases continued to be processed under the old law if the offense had occurred prior to September 1, 1973.

Sources: New York State Division of Criminal Justice Services, *Felony Processing Reports* and Forms D and E.

The decline in total superior court convictions, however, considerably diluted whatever impact the mandatory sentencing provisions of the 1973 law might have had. The result was that the chances of incarceration facing a defendant arrested for a drug felony remained virtually unchanged under the new law. About 11% of persons arrested for drug felonies in 1972 received prison or jail sentences in the felony courts. In the first half of

1976, between 11% and 12% of arrestees were incarcerated (Table 29).[8] The 3,388 sentences from 1974 to mid-1976 fell short of the 3,594 sentences imposed during the prior two years. The 3,388 sentences included 2,551 sentences imposed under the 1973 law. The remaining 837 sentences came in old law drug cases which were still pending in the courts after September 1, 1973.

If the ratio of incarceration to conviction had risen as it did, but there had been no decline in indictment or conviction rates, the 1973 law would have increased an arrestee's risk of incarceration from 11% in 1972 to over 18% in 1976. (The 18% is derived by combining the 55% incarceration rate actually achieved with the 39% indictment rate and 86% conviction rate which applied in 1972).

If the risk facing an arrestee had gone up as substantially as this, the New York drug law would have provided a better test for the hypothesis that an increase in the certainty of punishment can provide an effective deterrent. However, in a criminal justice system in which policies and procedures are continuously changing, it is not realistic to expect the results (e.g., indictments or convictions) of one period to apply to another period. The preceding sections point out some of the factors likely to influence the outcome of changes in the criminal justice process—factors which should be taken into account when planning future policies to control crime.

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8. The "risk of incarceration" in the text and Table 27 is interpreted as the "risk of timely incarceration." Changes in this risk of incarceration can occur both (1) because of changes in the likelihood that an arrestee will eventually be incarcerated (i.e., at any time following arrest), and (2) because of changes in the speed with which arrests are processed through the courts.

Other measures of risk are possible. For example, changes in the speed of justice can be ignored, and the chances of eventual incarceration alone can be estimated. Arithmetically, this is done by multiplying (a) the ratio of prison and jail sentences to all superior court dispositions (including convictions) by (b) the ratio of indictments to felony arrests. This process ignores any imbalance between indictments and dispositions in a given year. For New York State, the resulting risks, which may be compared to the last line in Table 29, are:

1972	1973	1974	1975	Jan.-June 1976
11.4%	10.7%	9.1%	9.9%	11.0%

The most accurate way to measure eventual risk for individual arrestees is to trace a sample of arrests through the entire court process to determine how many arrests in the sample eventually lead to incarceration. In a situation where the courts are generally keeping up with the inflow of new cases (i.e., when the size of the pending caseload is not changing very much), the "risk of incarceration" cited in the text will closely resemble the risk determined by these other methods. In New York State as a whole and in New York City, this condition was probably met during 1976.

The most appropriate measure of risk is the one which most closely affects the behavior of would-be offenders. But this criterion is not helpful in choosing among the several measures of risk because no empirical evidence on the question is available.

Prison for Class A Offenders

As a general rule the 1973 law made State prison sentences mandatory for all defendants convicted of class A drug felonies. However, lifetime probation terms could be granted to defendants convicted of class A felonies who provided information considered useful to the prosecution.[9] In addition, the 1975 amendment extending Youthful Offender treatment to 16 to 18-year-olds convicted of class A-III offenses meant that these offenders could be granted probation without resort to the informant requirement.[10]

More than four out of five defendants convicted of class A drug felonies during 1974, 1975, and the first half of 1976 received State prison terms. The balance were sentenced to probation as either informants or Youthful Offenders. Under the old drug law, about two-thirds of the defendants convicted in superior court of offenses equivalent to new class A felonies had been sentenced to prison or jail (Table 30).

TABLE 30

PERCENTAGE OF DEFENDANTS SENTENCED TO STATE PRISON OR LOCAL JAIL FOLLOWING CONVICTION FOR DRUG OFFENSES, NEW YORK STATE SUPERIOR COURTS

	Percentage of Defendants Sentenced to Prison or Jail
Old law offenses equivalent to new law class A felonies (1972-1974)	65.6%
New law class A offenses (1974-June 1976)	83.4%
Old law offenses equivalent to new law felonies below class A (1972-1974)	32.0%
New law offenses below class A felony (1974-June 1976)	21.1%

Source: "Sentencing Patterns Under the 1973 New York State Drug Laws," *Staff Working Papers*, No. 4.

Offenders convicted in superior court of drug offenses below the class A level found their chances of going to prison or jail reduced under the new law; only a fifth received prison or jail terms. Under the old drug law about one-third of the defendants convicted in superior court of similar offenses were sentenced to prison or jail.

Under the 1973 law, then, certainty of punishment following conviction rose for those offenders most likely to have been sentenced to prison or jail

9. PL 60.03 (b), 1973 *N.Y.S. Laws*, ch. 278(2).
10. CPL 720.10 (2), 1975 *N.Y.S. Laws*, ch. 832.

under the old law. To some extent, there was a shift in prison resources away from the less serious drug offenders to the more serious.

Punishment

Drug offenders sentenced to prison under the 1973 law received longer prison sentences than offenders sentenced under the old law. Between 1972 and 1974, only three percent of those convicted and sentenced to prison for old law drug felonies received a minimum sentence of more than three years. During 1974 and 1975 under the new drug law, about 22% received minimum sentences of more than three years.[11] Furthermore, some 1,777 defendants convicted under the new drug law were sentenced to indeterminate lifetime prison terms between September 1973 and June 1976. Only a handful of these sentences would have been likely under the old law.

Precise comparisons between sentencing patterns under the old and new laws are complicated by the fact that the 1973 law resulted in major changes in sentencing practices for drug offenses. Under the old law, minimum terms of imprisonment were imposed by judges on all class A offenders, but few class A prosecutions occurred. In non-class A cases—the large majority of drug cases under the old law—judges set only maximum terms of imprisonment. Minimum terms of imprisonment (i.e., periods of parole ineligibility) for drug offenders were set by the New York State Board of Parole after the offender had already been incarcerated. Officials knowledgeable about the parole system report that, on the average, inmates served one-third of the maximum term originally imposed by the judge.

Under the new drug law, judges set the period of parole ineligibility for class A felons, and a lifetime maximum prison term applied in all these cases. The Parole Board retained the discretion of releasing inmates at any time after they had served their minimum sentence. Thus, the maximum term was no longer relevant as a gauge of time spent in prison. Data made available by the New York State Department of Correctional Services indicate that the minimum term imposed by the judge was probably a more accurate measure of the time which each inmate would spend in prison under the new law. These data show that about one-third of all class A-III offenders sentenced to one year to life terms during 1974 were released after their minimum term had been served.[12]

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11. Survey by the Drug Law Evaluation Project described in *Staff Working Papers*, No.4.
12. New York State Department of Correctional Services, personal communication, June 15, 1976.

To estimate the effect of the new law on time served, Table 31 compares minimum terms of imprisonment in new law class A cases with maximum terms of imprisonment in old law cases which would be classified as class A cases today. Under the old law, 64% of all offenders could expect to serve terms of two years or less. Under the new law, 58% of the sentences carried a *minimum* period of two years or less.

TABLE 31

LENGTH OF PRISON TERMS FOLLOWING CLASS A FELONY DRUG CONVICTIONS IN NEW YORK STATE SUPERIOR COURTS[a]

	Old Law (1972-1974) Equivalent to New Law Class A Average Term (= 1/3 Maximum)	New Law (1974-1975) Minimum Term
Local jail		
Up to 1 year, actual term	10.0%	—[b]
State prison		
1 year	14.1%	46.1%
1 year to 2 years	40.3	11.6
Greater than 2 years	35.6	42.3
Total	100.0%	100.0%

[a]The two distributions are significantly different at the 5% level, using the chi-square test. About 9% of 929 old law class A equivalent cases were sampled. The total number of new law class A prison sentences was 1,094, of which 416 were sampled.

[b]Local jail sentences for class A offenders are not permissible under the 1973 law.

Source: "Sentencing Patterns Under the 1973 New York State Drug Laws," *Staff Working Papers*, No. 4.

Some crime will have been prevented as potentially dangerous offenders spent longer periods under incarceration, but at least part of this benefit will have been offset because there were fewer prison and jail sentences imposed under the new law (Table 29).

Although the length of time served in prison will probably increase for those offenders sentenced to prison, most offenders sentenced to prison for class A offenses received the lowest possible sentence which the law allowed. During 1974 and 1975, about 63% of defendants convicted of class A-III offenses were given the lowest possible term under the new law, one year to life (Table 32). Only 14% of these defendants received a minimum term greater than three years. Of defendants convicted of class A-I drug felonies, over 95% were given the lowest possible sentence of 15 years to life, while a similar proportion of class A-II offenders received the minimum possible term of six years to life.[13]

13. Survey by the Drug Law Evaluation Project described in *Staff Working Papers*, No. 4.

TABLE 32

MINIMUM TERMS OF IMPRISONMENT IMPOSED ON DEFENDANTS CONVICTED OF CLASS A-III OFFENSES IN NEW YORK STATE, 1974-1975

Minimum Sentence Imposed	Number of Defendants	As a Percentage of Total
One year	513	62.6%
One to three years (13 to 36 months)	193	23.6
Three to eight and one-third years (37 to 100 months)	113	13.8
Total	819	100.0%

Source: New York State Department of Correctional Services, personal communication, June 15, 1976.

Plea Bargaining

The plea bargaining provisions of the 1973 law prohibited defendants in class A cases from pleading guilty to a charge below the class A level. Plea bargaining within the class A category was permitted, however, and occurred frequently.

Class A-I and class A-II indictments accounted for 53% of all class A drug indictments between 1974 and mid-1976, but there were comparatively few class A-I and class A-II convictions during this period. Of all class A-I indictments which resulted in conviction during 1974 and 1975, for example, only 20% resulted in a class A-I conviction, while 56% led to convictions on class A-III charges. Of all class A-II indictments resulting in conviction during 1974 and 1975, only 29% led to a class A-II conviction, while 71% resulted in convictions on class A-III charges. Partly as a result of extensive plea bargaining among class A defendants, over 84% of all class A convictions obtained between 1974 and mid-1976 were class A-III convictions — a fact which had a significant impact on the average length of sentence imposed under the new law.

Under the old law, 80% of defendants indicted for offenses which would be class A offenses under the 1973 law pled guilty to lower charges (i.e. to crimes which were classified below class A crimes under the 1973 law). As noted above, the new law prohibited defendants in class A cases from pleading guilty to offenses below the class A level.

Extensive plea bargaining also occurred in drug cases below the class A level. The 1973 law prescribed mandatory prison sentences for all offenders convicted of class B and class C drug felonies (with the exception of offenses involving marijuana) but did not restrict plea bargaining in these cases. Of the 2,667 class B and class C drug indictments which

resulted in conviction between 1974 and mid-1976 (all but 14 of the indictments were for class C crimes), about 87% led to convictions below the class C level where prison was not mandatory.

In New York City, the Time Required to Process Drug Law Cases Lengthened Dramatically.

In spite of the 31 additional judges furnished to the New York City Supreme Court, court delays in drug cases increased between 1973 and 1976. The median length of time taken to dispose of drug cases increased from about six months to almost one year. During the same period, the length of time required to process all felonies in New York City also increased signficantly, but not as much (Table 33).

TABLE 33

MEDIAN DAYS FROM INDICTMENT TO DISPOSITION IN FELONY CASES, NEW YORK CITY, 1973 TO 1976

	Sept.-Dec. 1973	1974	1975	Jan.-June 1976
Drug cases	172	239	265	351
All felonies	148	178	176	223

Source: New York State Division of Criminal Justice Services, *Felony Processing Reports.*

The slowdown in the disposition of drug felonies in New York City resulted in a steady increase in the backlog of new law drug indictments. By mid-1976, the backlog of new law drug cases had risen to over 2,600 cases (Table 34).

TABLE 34

NEW LAW DRUG CASES IN THE NEW YORK CITY SUPREME COURT SEPTEMBER 1, 1973 TO JUNE 30, 1976

Case Type	Indictments	Dispositions	Rise in Backlog[a]	Percentage Contribution to Backlog
Class A drug felonies	4,898	2,693	2,205	85%
Other new law drug felonies	1,765	1,364	401	15%
Total new law drug felonies	6,663	4,057	2,606	100%

[a]In any year that the courts dispose of fewer cases than the number of new indictments, the backlog (size of pending caseload) increases accordingly. In any year that the courts dispose of more cases than the number of new indictments, the backlog of cases is reduced.

Sources: New York State Division of Criminal Justice Services, Forms D. Data contained in "The Effects of the 1973 Drug Laws on the New York State Courts," *Staff Working Papers*, No. 3, on the backlog of drug cases in New York City were compiled from two sources: The New York State Division of Criminal Justice Services, Forms D; and the Management Planning Unit, Office of Court Administration, JC-153 forms. Since these data series differ from each other by a statistically insignificant margin, only the data from the State Division of Criminal Justice Services were used in this table.

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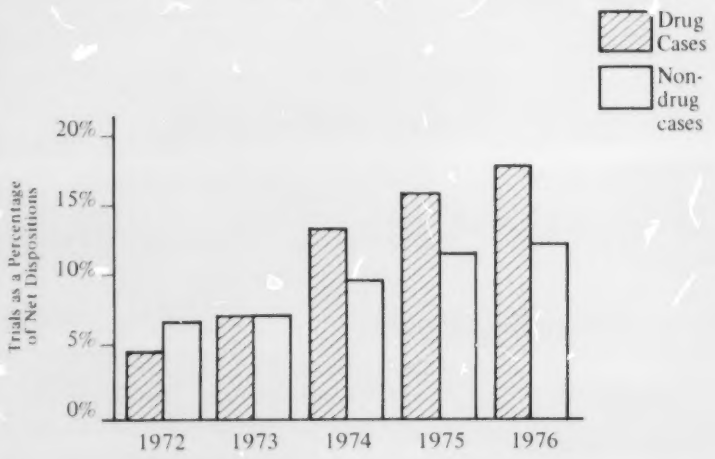
The continued growth of the drug case backlog was due mostly to the slow pace at which class A cases were disposed of by the New York City courts. Between September 1973 and June 1976, dispositions were obtained in only 55% of class A drug indictments. As a result, by mid-1976, these cases accounted for 35% of the pending new law drug caseload.

Two factors contributed to the slowdown in the criminal justice process: the demand for trials in drug cases rose sharply, and the productivity of the new courts created under the 1973 law failed to match that of the established courts. Contributing to the low productivity was the fact that even cases which did not result in a trial took longer to dispose of because incentives for delay were increased.

CHART 16
TRIALS IN THE NEW YORK CITY SUPREME COURT



Source: New York State Division of Criminal Justice Services, Forms D.

The mandatory sentencing and plea bargaining provisions of the 1973 law encouraged drug defendants to take their cases to trial in increasing numbers. During 1972 and 1973, an average of only six percent of drug indictments had been disposed of by trial. After the 1973 law took effect, trials rose to about 17% of dispositions (in the first half of 1976). In non-drug cases, the percentage of trial dispositions also increased, but rose only from 6% to 12% (Chart 16).[14]

14. These trial percentages, as well as those in Chart 16, reflect trials as a percentage of *net* dispositions, i.e., excluding indictments disposed of by consolidation with other indictments.

The heightened demand for trials resulted in 211 drug trials in the New York City Supreme Court during the first half of 1976 alone, compared to 166 in all of 1972.[15] A trial presents the best forum for a complete review of the facts in a case. At the same time, it is very expensive to conduct. In New York City in 1974, it took between ten and fifteen times as much court time to dispose of a case by trial as by plea.[16]

Because defendants indicted for class A-III felonies were not permitted to plea bargain to any lower charge, they had the greatest incentive to take their cases to trial. Between January 1974 and June 1976, about one-third of all defendants indicted on class A-III felonies went to trial rather than pled guilty (Table 35). Since class A-III indictments accounted for 41% of all class A indictments in New York City during this period, the high trial rate among class A-III defendants was an important factor in the workload that confronted the City's courts. Class A-III drug trials accounted for 61% of the class A trial workload and 40% of the entire drug trial workload in the New York City Supreme Court during this period (Table 35).

TABLE 35

CLASS A DRUG CASES IN NEW YORK CITY
JANUARY 1, 1974 TO JUNE 30, 1976

Case Type	Indictments[a]	Dispositions[b]	Trials	Trial Rate[c]
A-I	1,611 (30.7%)	702	92 (17.1%)	13.1%
A-II	1,508 (28.7%)	646	117 (21.7%)	18.1%
A-III	2,132 (40.6%)	951	329 (61.2%)	34.6%
All A cases	5,251 (100%)	2,299	538 (100%)	23.4%
All drug cases	7,120	4,760	733	15.4%

[a]Defendant-indictments. When one defendant is named in multiple indictments, each indictment is counted separately (see Glossary).

[b]Total dispositions minus indictments disposed of by consolidation with other indictments.

[c]Trials as a percentage of dispositions.

Source: New York State Division of Criminal Justice Services, *Felony Processing Reports* and Forms D.

The second reason delays occurred in processing new law cases was that, even after allowing for the increase in trials that occurred under the 1973 law, the productivity of the courts created to implement the 1973 law did not match the productivity of existing courts.

During the first half of 1974, when the backlog of new law cases was increasing at its fastest pace, the new drug and predicate felony parts in the Manhattan Supreme Court disposed of 0.7 cases every day a court part

15. This figure excludes trials which resulted in Youthful Offender sentences.

16. See *Staff Working Papers*, No. 3, Section 6.

was open. During the same period, the non-drug parts in Manhattan disposed of 1.2 cases per part day (Table 36).[17]

TABLE 36

PRODUCTIVITY IN THE MANHATTAN SUPREME COURT
JANUARY-JUNE, 1974

	Drug and Predicate Felony Parts	Non-Drug Parts
Trial rate	9.9%	7.1%
Time required for trial disposition	7.1 days	6.4 days
Time required for non-trial disposition	0.75 days	0.37 days
Dispositions per part-day	0.72 dispositions	1.24 dispositions
Average number of appearances per disposition	21	11

Source: "The Effects of the 1973 Drug Laws on the New York State Courts," *Staff Working Papers*, No. 3, Section 6.

The fact that the drug courts had to cope with a high demand for trials provides part of the explanation for this large difference. If the non-drug parts had experienced the same trial rate as the drug parts (Table 36), their productivity would have fallen from 1.2 cases a day to about 1.0 case a day. The higher trial rate, therefore, explains only about half the difference in productivity between drug and non-drug parts.

If the drug parts had matched the productivity of the non-drug parts during the first half of 1974, they would have disposed of 1,665 cases, even while conducting the greater number of trials in drug cases. In actuality, 1,249 indictments were disposed of during the six month period.

The time taken to dispose of trial cases was about the same in the drug parts (7.1 days) as in the non-drug parts (6.4 days). The time taken to dispose of non-trial cases, however, was twice as long in the drug parts (0.75 days) as in the non-drug parts (0.37 days). This difference can probably be explained by the large number of court appearances it took to dispose of a non-trial drug case. In the non-drug parts, the average case, whether disposed of by plea or by trial, appeared on the court calendar 11 times before disposition. In drug parts, cases appeared an average of 21 times before disposition.

17. Productivity measures for the New York City courts were available only for the period after 1973. Of all the New York City counties, only Manhattan had enough court-rooms specializing in drug cases to provide a sound basis for comparison with non-drug courts. See *Staff Working Papers*, No. 3, for a description of the estimating procedure.

Differences in productivity between the drug and non-drug parts in Manhattan narrowed during the first half of 1975. The drug parts disposed of 0.7 cases per part-day while the non-drug parts disposed of 0.9 cases per part-day. Overall productivity in both courts declined as it took longer to dispose of non-trial cases. During this period, the drug parts disposed of about 1,450 cases. If they had matched the productivity of the non-drug parts, they would have disposed of 1,639 cases.

If the new courts had matched the productivity of the existing courts, there would have been only a small increase in the drug felony backlog during 1974 and 1975, and the new law would have been more effectively carried out.

Introduction of the 1973 law also seems to have reinforced the incentives defendants normally have to cause delays in criminal proceedings. Such delays generally benefit defendants because a time lapse between the event and the trial is likely to have an adverse affect on the memory and availability of witnesses who are to testify against the defendant. Consequently, defendants often seek delays and postponements. Under the 1973 law, defendants sought to delay as long as possible the day of sentencing and the start of the inevitable prison term. For defendants on bail or parole, postponement meant the difference between being free or being locked up. For defendants in pre-trial detention, it meant the difference between being in a local jail, with family and friends close by, and being in a State prison often far from home.

Defense attorneys throughout the State reported that, since plea bargaining under the 1973 law was more restricted than under the old law, defendants faced with a strong case against them were less likely to plead guilty than before, they would first exhaust every possibility of avoiding the mandatory prison sentence. Defense attorneys, therefore, often engaged in negotiations to have a drug law indictment superseded by an indictment for a crime that did not carry a mandatory prison sentence, or to trade information and cooperation for a lifetime probation sentence.

In those cases involving mandatory prison sentences, defense attorneys also consistently challenged the evidence gathering process. A defendant able to plead guilty and receive a non-prison sentence might have chosen to do so early in the adjudication process, forgoing a challenge to police practices that was not likely to be successful. With a prison sentence in the balance, however, defendants were more willing to challenge police techniques, in the hope that the indictment would be dismissed. The fact that dismissals in New York City increased suggests that this practice met with some success.

A final factor contributing to delays may have been the expectation that the 1973 law would be changed. An amendment relaxing plea bargaining

restrictions was passed by the Legislature in 1975, but vetoed by the Governor. In 1976, a similar amendment was enacted into law. Those defendants who had succeeded in delaying their sentencing date until the amendment became operative benefited from this change.

Court Delays Reduced the Threat of the New Law.

As a result of delays in processing new law cases, fewer drug indictments were disposed of under the new law than would have been expected during a similar period of time under the old law. During 1972, for example, the New York State courts were able to dispose of 93% of all new drug indictments. Between January 1974 and June 1976, the courts disposed of only 62% of the 12,026 indictments brought under the new drug law.[18]

As noted above, the New York City courts were particularly slow in disposing of new class A drug cases. On a statewide basis, fewer than one-fifth of all class A drug indictments were disposed of by the courts during 1974. By the middle of 1976, the courts had disposed of only 52% of all class A indictments that had been obtained since the new law became effective (Table 37).[19]

TABLE 37

NEW LAW CLASS A DRUG FELONIES IN NEW YORK STATE, 1974-1976

	1974	1975	Jan.-June 1976	Total
Indictments[a]	2,672	2,348	1,165	6,185
Dispositions[b]	515	1,524	1,154	3,193
Convictions[c]	322	1,005	803	2,130
Prison sentences	296	798	683	1,777

[a]Number of defendants.

[b]Excludes indictments disposed of by consolidation.

[c]Excludes convictions obtained on non-class-A, or non-drug charges.

Source: New York State Division of Criminal Justice Services, *Felony Processing Reports*. Figures for indictments are estimates by the Drug Law Evaluation Project.

18. The figure of 12,026 refers to defendants, not defendant-indictments (see Glossary). This figure is an estimate by the Drug Law Evaluation Project.

19. The statewide figure of 52% is derived from the *Felony Processing Reports* of the New York State Division of Criminal Justice Services. Data from the New York State Division of Criminal Justice Services, Forms D, indicate that the New York City courts had disposed of 55% of all class A indictments by mid-1976 (Table 34), suggesting that the courts in New York City had disposed of a greater percentage of all class A indictments than courts in counties outside New York City. *The Felony Processing Reports*, however, show that the New York City courts had disposed of only 49% of class A indictments by June 1976, while courts in the rest of the State had disposed of 58%. While the data from Forms D probably provide the most accurate indication of what took place in New York City, the *Felony Processing Reports* are preferred as a means of comparing court performance in New York City with court performance in the rest of the State.

The delay in processing class A drug cases considerably diluted the impact of the mandatory sentencing provisions of the 1973 law. During 1974 and 1975, more than one-half of all new law drug indictments were for class A offenses. But, because of the delay in disposing of class A cases, fewer than one third of all convictions obtained in superior courts under the new law during this period were class A convictions. During 1974 and 1975, over 82% of convicted class A defendants were sentenced to prison, but the relatively small number of class A convictions meant that only a moderate increase occurred in the overall incarceration rate for drug offenses. In 1974, the incarceration rate stood at about 35%, only a slight increase over the pre-1973 level of 33%. In 1975, the incarceration rate rose to about 44%.

In the first half of 1976, the number of class A cases disposed of in superior courts almost matched the number of new class A indictments (Table 37). The number of non-A drug cases disposed of in superior courts also roughly matched the number of new non-A indictments. The experience of the courts during the first six months of 1976, therefore, provides an indication of how the 1973 law would have operated if there had been no lag in the disposition of new law cases. During this period, the over-all rate of incarceration for drug defendants convicted in superior courts rose to about 55%.

If ways had been found to counteract the problem of court delays, and if the courts had been able to function as effectively in 1974 and 1975 as they did in the first half of 1976, the new drug law would have led to approximately 500 more prison and jail sentences each year across the State than would have been imposed under the old drug law.[20] This would have meant an increase of about 36% over the 1,500 prison and jail sentences imposed on drug offenders convicted in superior courts in 1973.

The 1976 Amendment and Its Implications

In July 1976, the drug law was amended to permit defendants indicted for class A-I, II offenses to plead guilty to a class C felony instead.[21] On conviction of a class C felony, such defendants could be sentenced to a term of a year or less in local jail instead of to an indeterminate lifetime term in State prison. This amendment was expected to ease problems of court delay by encouraging defendants in class A-III cases to plead guilty rather than take their cases to trial. By reducing the number of jury trials in drug cases, the amendment was expected to reduce processing times and to help the courts to dispose of their pending drug cases.

During the first six months the 1976 amendment was in effect it did

20. This estimate is derived by "allowing" the courts to dispose of all new indictments, and then by applying the actual conviction rate (80%) and the actual incarceration percentage (55%) to the resulting dispositions.

21. Chapter 424 of the 1976 Laws of New York State.

indeed result in a substantial reduction in the frequency with which drug cases went to trial in New York City (Table 38).

TABLE 38

TRIAL RATES[a] IN THE NEW YORK CITY SUPREME COURTS

	January-June, 1976	July-December, 1976
All drug cases	17.1%	9.1%
Class A-III cases	34.4%	5.7%

[a]Trials as a percentage of dispositions excluding indictments disposed of by consolidation.

Source: New York State Division of Criminal Justice Services, Forms D.

In counties outside New York City, the 1976 amendment did not have such a noticeable impact. In some of these counties, class A cases accounted for a relatively small proportion of the total drug felony workload, and trial rates had not increased notably even under the 1973 law. In counties with a significant number of class A drug cases, however, the amendment did result in a moderate reduction in the trial rate for drug offenses (Table 39).[22]

TABLE 39

TRIAL RATES[a] IN DRUG CASES IN THE SUPERIOR COURTS OF SELECTED COUNTIES OUTSIDE NEW YORK CITY, 1976

	January-June	July-December
Albany	26.3%	26.7%
Erie	6.9	3.4
Monroe	4.1	2.8
Nassau	4.1	3.0

[a]Trials as a percentage of dispositions excluding indictments disposed of by consolidation.

Source: New York State Division of Criminal Justice Services, Forms D.

During the first six months that the 1976 amendment was in effect, however, it did not lead to a noticeable reduction in processing times or in drug case backlogs. The major impact of the amendment was to stabilize the backlog of drug cases, rather than to reduce it. In the New York City Supreme Court, for example, the backlog of drug cases had begun to level off even before the amendment came into effect, and remained virtually unchanged from the end of 1975, when it stood at 2,568 pending indictments; there were 2,606 indictments pending at the end of June 1976, and 2,580 at year's end.[23]

22. For a discussion of the experience of counties outside New York City under the 1973 law, see below, pp. 121-145.

23. New York State Division of Criminal Justice Services, Forms D.

Processing times in drug cases in the New York City Supreme Court did not show a significant change after the amendment became effective. During the first half of 1976, the median time taken to dispose of a drug case stood at 351 days. For the full year, the median time taken to process drug cases was 339 days.[24]

Data from individual boroughs (counties) in New York City suggest that district attorneys made selective use of the plea bargaining opportunities afforded by the 1976 amendment. In the Manhattan Special Narcotics Court the newly gained flexibility apparently produced positive results. The backlog of drug cases, which had increased by 80 cases in the first six months of 1976, was reduced by 121 cases in the second half of the year.[25] However, the backlog did not change significantly in other boroughs, even though there were fewer drug indictments in the second half of 1976 than earlier in the year.

It remains to be seen if the courts can productively channel the resources released from class A-III trials into more serious drug cases. During the amendment's first six months, the New York City courts had greater flexibility and a sharply reduced trial workload but were unable as a whole to dispose of drug cases any faster or to make significant inroads into their pending caseload. Although it would be premature to judge the 1976 amendment on the basis of six month's performance, that brief experience supports the conclusion that court delays under the 1973 law were due as much to lower productivity in the courts as to an increased demand for trials among drug defendants.

Besides reducing the number of trials in drug cases, the major consequence of the 1976 amendment during the first six months it was in operation was to increase the number of local jail sentences imposed on drug defendants convicted in superior courts. The amendment provided that class A-III defendants who pled guilty to class C felonies could be sentenced to local jail terms instead of to State prison. By State law, there was no statutory minimum length for a local jail sentence. It might be as short as one day, but in no case might it exceed one year. In New York City, the number of defendants sentenced to local jail following a superior court drug conviction increased from 81 in the first half of 1976 to 218 in the second half of 1976. This represented an increase from 8.4% to 27.0% of all sentences imposed on drug offenders in superior courts.[26] Sentences to State prison fell accordingly.

By permitting class A-III defendants to plead guilty to a charge for which they could receive a local sentence, the 1976 amendment may in the

24. New York State Division of Criminal Justice Services, *Felony Processing Reports.*
25. New York State Division of Criminal Justice Services, Forms D.
26. New York State Division of Criminal Justice Services, Forms D.

future have the effect of increasing the overall incarceration rate for drug offenders; since class A-III defendants will be more likely to plead guilty, their cases will be less likely to result in dismissal or acquittal. Data for the second half of 1976, in fact, show that the rate of incarceration for drug offenders did increase after the amendment took effect, both in New York City and in the State as a whole (Table 40). This was true even though drug cases were not disposed of at a faster rate than in the first half of the year.

TABLE 40

DRUG OFFENDERS SENTENCED TO PRISON OR JAIL FOLLOWING A SUPERIOR COURT CONVICTION

	January-June, 1976	July-December, 1976
Statewide		
Number sent to prison or jail	945	978
Percentage of those convicted	54.8%	61.9%
New York City		
Number sent to prison or jail	539	585
Percentage of those convicted	67.5%	75.0%

Source: New York State Division of Criminal Justice Services, *Felony Processing Reports.*

Even so, the risk of incarceration facing an arrestee did not increase, because fewer drug arrests led to indictments in the last six months of 1976. The statewide ratio of indictments to felony arrests fell from 25% in early 1976 to 19% in the second half. In New York City, the percentage dropped by a third, from 24% to 16%. But as far as incarceration in general is concerned, some of this decline may have been compensated for by a rise in the number of local jail sentences imposed on defendants whose cases were disposed of in lower courts instead of through indictment. Apparently, when prosecutors are faced with the possibility of obtaining at least some punishment as a result of a lower court disposition, they are reluctant to pursue the case through a time consuming superior court process.

Summary of Changes in the Criminal Justice Process

Under the old drug law in 1972 and 1973, there were 3,594 prison and jail sentences imposed on drug law offenders in the State's superior courts. These sentences arose out of 34,863 felony drug arrests. The process from arrest to incarceration was as follows:

1972-1973

Of 34,863		felony arrests,
13,497	(39%)	led to indictment, of which
12,571	(93%)	were disposed of in the courts; of which
10,772	(86%)	resulted in a conviction; and of these,
3,594	(33%)	resulted in a prison or jail sentence, an average of
1,797		per year.

In trying to forecast the number of prison and jail sentences under the new law, an observer in 1973 might have thought that only the last of these percentages would change: that as a result of the mandatory prison sentences embodied in the 1973 law, far more than 33% of convicted offenders would be incarcerated.

The 1973 observer would have been correct in this last projection: 54% of new law offenders convicted in superior courts were incarcerated in the first half of 1976. (The 55% incarceration rate referred to elsewhere includes the results of both new law and old law cases disposed of during the first half of 1976.) If this statistic had been known to the forecaster, and if he had also known that 41,334 felony drug arrests would be made between 1974 and June 1976, he might have forecast that 6,962 prison and jail sentences would result:

Forecast

Of 41,334		felony arrests,
16,120	(39%)	would lead to indictment; of which
14,992	(93%)	would be disposed of in the courts; of which
12,893	(86%)	would result in a conviction; and of these
6,962	(54%)	would result in a prison or jail sentence, an average of
2,785		per year (over 2 1/2 years).

Comparing this result with the 1,797 annual sentences under the old drug law, the 1973 forecaster would have seen a 55% increase, and the additional 1,000 annual sentences might have looked large enough to produce a reduction in drug use and drug-related crime.

But several changes intervened to frustrate the forecaster's projection. Some of the changes were attributable in part to the 1973 law and some were not, but they all combined to dilute the effect of the increase (from 33% to 54%) in the frequency of prison and jail sentences following conviction.

First, far fewer arrests led to indictment under the new law than previously, and this reduction absorbed a large share of the 1,000 additional annual sentences:

Effect of Lower Indictments

Of the	41,334	felony arrests, only
	12,026 (29%)	led to indictment.
If this had been the only change,		
	11,184 (93%)	would have been disposed of in the courts; of which
	9,618 (86%)	would have resulted in a conviction; and of these
	5,194 (54%)	would have resulted in a prison or jail sentence, an average of
	2,078	per year.

Second, the court process slowed considerably so that over the 2 1/2 year period less than two-thirds of the new law drug indictments were disposed of. This further reduced the number of sentences under the new law:

Added Effect of Court Slowdown

Of the	41,334	felony arrests,
	12,026 (29%)	led to indictment, of which only
	7,410 (62%)	were disposed of in the courts.
If these had been the only changes,		
	6,373 (86%)	would have resulted in a conviction; and, of these
	3,441 (54%)	would have resulted in a prison or jail sentence, an average of
	1,376	per year.

This number of sentences is below the number actually imposed under the old law. Thus, the combination of a lower indictment rate and the slowdown in the courts eliminated whatever additional sentences would have been expected under the 1973 law.

There were still further reductions. Convictions fell under the 1973 law. This was due in part to the shift from pleas to trials: some portion of the new trials resulted in acquittals. In addition, dismissals rose markedly in New York City.

Added Effect of Lower Convictions

Of the	41,334	felony arrests,
	12,026 (29%)	led to indictment; of which
	7,410 (62%)	were disposed of in the courts; of which only
	5,802 (78%)	resulted in a conviction.
If these had been the only changes,		
	3,133 (54%)	would have resulted in a prison or jail sentence, an average of
	1,253	per year.

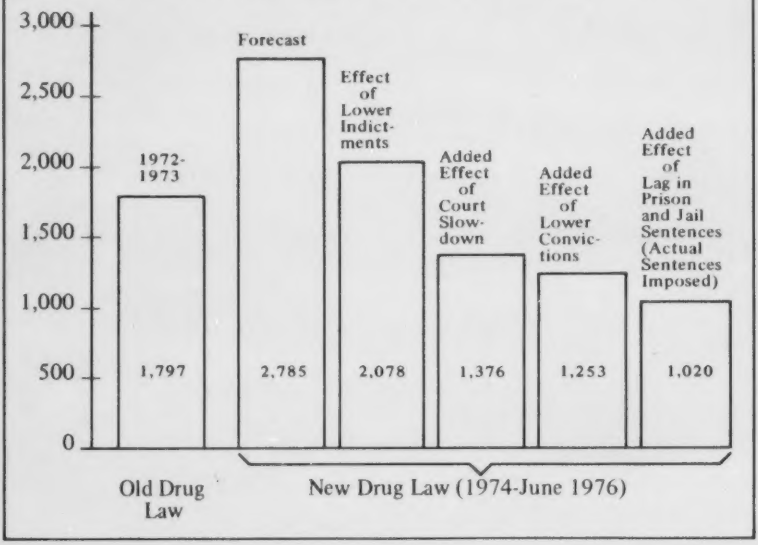
Fourth, and finally, the frequency with which convictions in superior court led to incarceration did not rise instantly to 54%. As court dispositions of class A cases lagged, the percentage of offenders incarcerated rose only to 35% during 1974 and to 44% in 1975; it reached 54% only in the first half of 1976. Over the entire 2 1/2 year period, the average percentage was 44%. The actual number of prison and jail sentences between 1974 and June 1976 thus resulted in the following manner:

Added Effects of Lag in Prison and Jail Sentences (Actual Sentences Imposed)

Of the 41,334		felony arrests,
12,026	(29%)	led to indictment; of which
7,410	(62%)	were disposed of by the courts; of which
5,802	(78%)	resulted in a conviction; and of these,
2,551	(44%)	resulted in a prison or jail sentence, an average of
1,020		per year.

Chart 17 depicts the cases summarized above.

CHART 17
AVERAGE ANNUAL PRISON AND JAIL SENTENCES IN NEW YORK STATE SUPERIOR COURTS FOR DRUG OFFENSES



Within the State's Criminal Justice System, There Was Little Enthusiasm for the 1973 Drug Law.

In emphasizing a need for stiff penalties against the low level sharer-pusher of narcotics, Governor Rockefeller was shifting the focus of New York State policy. The Governor viewed the sharer-pusher as holding the primary responsibility for the spread of addiction in the late 1960s and early 1970s, and for the increase in non-drug crime during that period.[27] During the late 1960s and early 1970s, State policy had encouraged diversion of the sharer-pusher into treatment. The Governor felt that this policy had failed, and that substituting the threat of severe penalties could establish an effective deterrent to illegal drug use and drug-related crime.[28]

The Governor's sudden shift understandably produced controversy. Most of the opposition came from criminal justice practitioners in New York City, where crime and drug use were most widespread. The Governor's proposal implied that the enforcement policies which had been followed during the preceding two years had been misguided. As noted above, the City's Police Department had abandoned a policy of extensive street-level enforcement in favor of concentrating resources on higher level dealers of narcotics. As Deputy Police Commissioner William McCarthy said in his testimony before the Legislature: "When the retail distributor is arrested no real damage has been done to the organization's . . . mechanism."[29] Deputy Chief Police Inspector William Bonacum pointed to the accomplishments of the Narcotics Division in making arrests of higher level dealers after the 1971 policy change.[30] The priorities of the New York City Police Department in narcotics enforcement were not changed in response to the 1973 law.

The opposition of the New York City Police Department was not matched by the Department's counterparts in other parts of the State. For example, police officials in Syracuse and Buffalo spoke in favor of the tougher approach before the Joint Codes Committee considering Governor Rockefeller's proposal.[31]

Prosecutors and judges in New York City felt that the penalties in the proposed law were too stiff for the low-level street addict. They doubted that tough penalties would create an effective deterrent or that justice

27. Testimony of Governor Nelson Rockefeller before the Joint Codes Committee, New York State Legislature, January 30, 1973.

28. 1973 Annual Message of the Governor before the Legislature.

29. Testimony before the Joint Codes Committee, New York State Legislature, at New York City, February 15, 1973, transcript p. 72.

30. *Ibid.*, pp. 75-87.

31. *Ibid.*, at Buffalo, February 23, 1973, transcript pp. 172ff. and at Syracuse, February 23, 1973 transcript pp. 1ff.

would be served by the removal of prosecutorial and judicial discretion in the plea bargaining and sentencing processes. Another concern was that the judicial system might be badly disrupted by the vigorous demand for trials that was expected to develop in drug cases.

New York County District Attorney Frank Hogan scored the Governor's proposal as "impractical, inequitable, and inexplicable"[32] and called for a renewed commitment to treatment for low-level drug offenders. Supreme Court Justice Burton Roberts, a former District Attorney of Bronx County, characterized the heavy penological approach emphasized by the Governor as a "simplistic, irresponsible solution—attempted solution—for a problem that is rather difficult"[33] and proposed that the police make a serious effort to commit addicts to treatment through civil proceedings.

Justice J. Irwin Shapiro of the Appellate Division, Second Department, called for a renewed effort at treatment of street addicts, and commented that "[t]he belief that the terrific penalty of life imprisonment will act as a deterrent is just a mirage."[34] Acting Supreme Court Justice Irving Lang, a member of the Temporary State Commission to Evaluate the Drug Laws, called for additional court resources to reduce administrative pressures to plea bargain.[35]

After the 1973 law became operational, several judges in New York City reiterated their opposition to the rigid plea bargaining restrictions. Judges have frequently said that they found it personally difficult to pronounce a mandatory lifetime sentence, particularly when they believed that a non-prison sentence would be more appropriate. Several judges have also contended that the penalty structure of the 1973 law was too harsh. In interviews with Project staff, one judge characterized the penalties as "savage," while another believed they were too severe in comparison with penalties for other serious crimes. A defendant indicted for murder, for example, faced no plea bargaining restrictions.

Institutional opposition to the 1973 law in areas outside New York City was much less strident. One reason was that judges outside New York City believed that the law was aimed directly at the alleged judicial leniency in the City and that in their own jurisdictions drug felonies already were being dealt with severely. Even without the mandatory provisions, said Justice Frederick Marshall, Administrative Judge of Erie County, individuals convicted of crimes defined by the 1973 law as class A felonies would most probably have been sentenced to State prison. His concern, shared by

32. *Ibid.*, at New York City, February 8, 1973, transcript p. 2.

33. *Ibid.*, p. 34

34. *Ibid.*, February 16, 1973, transcript p. 46. See also B. Roberts, *ibid.*, p. 42.

35. *Ibid.*, p. 78.

judges in other counties, was for the convicted offender for whom a prison sentence might not be appropriate, typically the young first offender.[36]

Secondly, serious drug crime acounted for a much smaller share of the court calendar outside the City, so that the threat to normal court business was less immediate.

In spite of the calm with which the law was received upstate, however, there was only mild support on the part of judges and prosecutors for mandatory life sentences and plea bargaining restrictions.

Judge J. Clarence Herlihy, Presiding Justice of the Third Department, which includes the northeastern and southern central counties of the State, believed that harsh penalties would provide an effective deterrent to drug crime. He supported the Governor's approach, but was troubled by the severity of the penalties proposed, and by the rigidity of the plea bargaining restrictions.[37] District Attorney Patrick Monserrate and County Court Judge Stephen Smyk, both of Broome County, criticized the law more for its rigidity in the treatment of individual offenders rather than for its generally tough treatment of drug offenses.[38]

On the other hand, Albany County Court Judge John Clyne expressed the opinion that the combination of lengthy prison sentences and the State's publicity campaign about them in 1973 had a significant deterrent effect on drug activity in his county.[39]

The contrast between widespread opposition to the law in New York City and its relative acceptance elsewhere in the State suggests that the implementation process may have proceeded more smoothly in some places than in others. A discussion of the implementation process in several counties is given below (pp. 121-145).

An Example of Intensive Enforcement

At a hearing of the Select Committee on Narcotics Abuse and Control of the U.S. House of Representatives, conducted in Harlem in November 1976, several congressmen severely criticized the City's drug law enforcement policy.[40] Within a week, an intensive street-level enforcement effort was under way, aimed specifically at controlling the heroin marketplace which had been allowed to thrive in parts of Harlem.

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36. Conversation with Drug Law Evaluation Project, August 11, 1975.

37. Testimony before the Joint Codes Committee, New York State Legislature, February 6, 1973 at Albany, transcript pp. 57ff.

38. Conversations with Drug Law Evaluation Project, August 26, 1975.

39. Conversation with Drug Law Evaluation Project, September 8, 1975.

40. Select Committee on Narcotics Abuse and Control, 2nd Interim Report, *op. cit.*, pp. 15-16.

The new effort, known as "Operation Drugs," drew resources from both the Police Department's Narcotics Division and the uniformed patrol force. In its first three months it produced over 4,000 drug and non-drug arrests in Harlem (Table 41). The 1,194 felony drug arrests were more than double the 556 felony drug arrests that had occurred during the same period a year earlier. As of June 1977 the operation was still seen as temporary, but no termination date had been set.

TABLE 41

ARREST ACTIVITY UNDER OPERATION DRUGS
NOVEMBER 26, 1976 - FEBRUARY 23, 1977

Total arrests	4,123
Drug charges	2,767
Drug felonies	1,194
Class A drug felonies	967
Drug misdemeanors	1,573
Non-drug charges	921
Non-drug felonies	418
Non-drug misdemeanors	503
Violations (drug and non-drug)	435

Source: New York City Police Department, Organized Crime Control Bureau.

Arrests under Operation Drugs were typicaly not the "sweep" arrests that had characterized much street-level enforcement in the late 1960s. Rather, they most often resulted from police observation of transactions. In addition, some arrests were made after an undercover officer had made a drug purchase himself—"buy and bust" arrests. Other arrests were made for "loitering for the purpose of using drugs."

Disposition patterns for felony arrests under Operation Drugs indicate that the "quality" of arrests was roughly comparable to that of arrests occurring in New York City at other times. From Criminal Court dispositions of these felony arrests, it appears that dismissals under Operation Drugs occurred with the same (high) frequency as at other times (Table 42). (Data describing the disposition of arrests in Harlem before Operation Drugs began are not available.) And while there were considerably fewer grand jury indictments under the Operation than at other times, misdemeanor pleas resulted in jail sentences much more often. This indicates generally speedier disposition of cases through avoidance of grand jury and Supreme Court processing. It also indicates more frequent but shorter sentences of imprisonment.

Officials of the Police Department's Narcotics Division, which normally spends only a small portion of its effort on street operations, were skeptical

TABLE 42

DISPOSITION OF DRUG FELONY ARRESTS IN THE CRIMINAL COURT

	Operation Drugs Nov. 1976-Feb. 1977	New York City 1975
Total felony drug arrests disposed of in Criminal Court	503	6,868
Percentage dismissed	45%	46%
Percentage guilty of misdemeanor	44%	26%
Percentage of these sentenced to jail after conviction	48%	18%
Average length of sentence	67 days	77 days
Percentage indicted	11%	28%

Sources: For Operation Drugs: New York City Police Department, Organized Crime Control Bureau. For New York City: Office of Court Administration, New York City Courts, *Criminal Court of the City of New York: Filings, Dispositions and Sentences, by Charge, Calendar Year 1975.*

about Operation Drugs. From their experience, they believed that street-level enforcement produces only superficial relief because major drug dealers are not directly affected. In addition, they looked upon Operation Drugs as an effort that drew resources away from other investigations; produced arrests with unacceptably high dismissal rates and relatively short sentences; threatened to reveal the identities of the limited number of undercover agents available to the Division; neglected other areas of the City; and drew upon overtime funds.

These officials were also concerned by the danger that an arrest or an intensified police presence might provoke isolated civil disturbances, particularly during the hot summer weather when the streets become more crowded than during other seasons.

Three month's experience with Operation Drugs did not change these views. However, Narcotics Division officials have conceded that the effort did improve the appearance of the neighborhood and reduce sidewalk congestion.

Community reaction was favorable to both the police presence and the less crowded streets, and police and residents both believed that street conditions would revert to their previous congestion if Operation Drugs were terminated. Before Operation Drugs, the targeted areas had been thronged with people—addicts, dealers, hawkers—much like a crowded fair or bazaar. After the Operation began, transactions moved from the avenues, with their wide sidewalks, broad streets and high visibility, to the side streets, where crowds became groupings of only a few people. Clusters formed and disbanded quickly. Dealers reportedly carried less drugs, so as

to be able to sell out their inventory quickly (which incidentally made evidence against them harder to obtain).

This increased caution in the marketplace was bound to reduce the use of heroin somewhat. Police operations such as Operation Drugs in essence raise the price of drugs by making them more difficult to obtain.[41] But it will take more than three months of data to determine how significant the reduction is, or what impact the Operation had on crime. Early analyses of neighborhood crime statistics proved inconclusive.

Operation Drugs cost the Police Department $4 million during its first four months. Without Operation Drugs, most of this cost would have been incurred for other police activities, because all but overtime costs are essentially fixed. Overtime accounted for $500,000 of the total. Less quantifiable but equally important costs accrued because drug dealing that is forced off the streets apparently occurs more often in apartments and building lobbies. It is harder to make an arrest in these settings because it is more difficult to observe a transaction taking place. The evidentiary problem of linking contraband to defendants, which always is difficult, is even harder when transactions occur indoors. In addition, persistent pressures on a limited market area might spread the marketplace into previously unaffected areas, making future control of these activities more difficult and creating new problems for residents.

Experience Outside New York City

Narcotics use is concentrated heavily in the nation's cities, and in New York State it is concentrated in New York City. In 1975, there were nearly 11 times as many deaths from narcotics in New York City as there were in the other 57 counties of the State combined. Narcotics deaths in Erie County, which contains the State's second largest city, Buffalo, occurred at only 1/35 the rate that was prevalent in New York.

The relatively low level of narcotics use outside New York City meant that the statistical techniques used to examine changes in heroin use in the City could not be employed in other communities. The number of narcotics deaths and serum hepatitis cases outside the City was often so low that the small changes that occurred created large percentage fluctuations, making trends difficult to distinguish statistically from random fluctuations.

As a substitute for a reliable statistical base, interviews with criminal justice officials and drug treatment program administrators from several parts of the State were conducted. Interviews in New York City showed

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41. See Mark H. Moore, *Buy and Bust: The Effective Regulation of an Illicit Market in Heroin* (Lexington, Mass.: Lexington Books, 1977).

that the consensus of police, defense and prosecutorial staffs, judges, and treatment program operators provided an accurate reflection of what the best statistical data indicated. Where indicators were available for the other counties, they were examined to complement the observations of the officials.

The criminal justice system in New York City differed in scale from systems in other jurisdictions. With 117 superior court judges sitting in criminal matters during 1975, New York City's court system was ten times as large as the State's second largest system, which is in Nassau County. In 1976, there were 15,512 indictments (for all felonies) in New York City. Nassau County, in second place, had 1,965. There were 2,385 indictments for drug law felonies in New York City in 1976. Nassau County, again the runner-up, had only 263 such indictments.

Size was not the only distinguishing feature of the City's criminal justice system. Interviews with judges, defense attorneys, and prosecutors across the State left the impression that a less pressured pace in the courts outside the City made it likely that changes in the law or in administrative practices could be accommodated with less disruption than was possible in the City. In counties outside New York City, the time taken to process drug cases did increase after the new law took effect but, in most counties, remained far below the time taken to dispose of drug cases in New York City. In counties outside New York City and its suburbs, the median time taken to dispose of drug felonies rose from 105 days in 1974 to 147 days in the first half of 1976 (data for 1973 were not available). In New York City, in contrast, the median time taken to dispose of drug cases in the first half of 1976 stood at almost one year. In suburban New York City counties, the median time taken to dispose of drug cases increased even more markedly than in New York City, from 147 days in 1974 to 365 days in the first half of 1976. Most of this increase, however, was probably accounted for by problems of court delay in Nassau county (see below), which had the largest number of drug cases to contend with. The relative calm of the courts outside the City probably contributed to the comparatively smooth implementation of the 1973 law in some counties, and their ability to avoid the persistent case backlog found in New York City.

The absence of persistent case backlogs in some counties outside the City made it possible to investigate whether, without New York City's congestion, the law had succeeded in increasing the frequency of prison sentences and had led to a reduction in drug use and drug-related crime.

The following sections present findings about the results of the 1973 drug law in the five largest counties outside New York City. Erie, Monroe, Nassau, Suffolk, and Westchester counties had a combined population of

5,276,000 (1970 census), accounting for half the non-New York City population in the State. In 1975, 3,814 drug felony arrests were made in these counties, about 52% of the State's total drug arrests outside New York City.

Experiences in the five counties varied, with Erie, Monroe, and Westchester having achieved some measure of success in implementing the new law, while Nassau and Suffolk lagged behind. Heroin use apparently did not decline noticeably from pre-law levels in any of the counties. There is wide agreement, however, that the period surrounding implementation of the new law was characterized by a marked, though temporary, retrenchment in heroin markets. Most probably, this tightening in the marketplace was the result of uncertainty about the enforcement practices which would accompany the new law, and the fear that vigorous enforcement would make it risky to deal in drugs.

Table 43 presents heroin use and criminal justice data for the five counties. Similar information for New York City and for the State as a whole is presented for purposes of comparison.

Erie County

Erie County, on the Niagara frontier, had a population of 1,100,000 in 1970. It includes Buffalo, the State's second largest city with a 1970 population of 463,000. In contrast to the New York City experience, the Erie County courts were generally successful in implementing the 1973 law. Indictments, convictions, and prison sentences for drug offenses increased significantly after the law took effect, and the risk of incarceration facing defendants arrested for drug felonies rose sharply. There was no noticeable problem of court delay in disposing of cases. Yet in spite of the increased risk of imprisonment facing drug offenders, there apparently was no sustained reduction in levels of drug use.

The Implementation Process

Drug felony actions in Erie County between 1972 and 1976 are shown in Table 44.

ARRESTS AND INDICTMENTS. Local police officials in Erie County reported that enforcement activity against drug offenders was stepped up after 1973 and greater priority was given to narcotics offenses. The head of the Buffalo Police Department's Narcotics Unit, for example, stated that the increase in drug felony arrests between 1973 and 1974 was the result of an emphasis on drug law enforcement. The assistant district attorney in charge of narcotics prosecution pointed out that his office had devoted special attention since the law had been enacted to improving coordination

TABLE 43

Heroin Use Indicators and Criminal Justice Drug Statistics, 1975

	County						
	Erie	Monroe	Nassau	Suffolk	West-chester	New York City	New York State
Deaths from narcotics	2	5	23	3	14	529	579
Per 100,000 population, aged 15-39	0.5	2.0	5.0	0.8	4.8	19.1	9.3
Cases of serum hepatitis	91	14	24	51	35	443	782
Per 100,000 population, aged 15-39	24.8	5.6	5.3	13.2	12.1	16.0	12.5
Felony drug arrests	1,180	563	846	782	443	8,307	15,941
Felony drug indictments	209	224	353	264	199	2,563	4,899
As a percentage of all felony indictments	32.8%	26.2%	28.5%	14.4%	15.9%	13.8%	13.9%
Superior court prison and jail sentences for drug offenses	75	51	73	23	60	788	1,397
New court parts established to implement the 1973 law/ Total superior court parts available for criminal cases	3/10	3/7	4/12	2/5	3/8	31/117	49/190

Sources: New York State Department of Health; New York State Division of Criminal Justice Services, Forms C, D and E; *idem, Crime and Justice in New York State, 1975* (Albany: Division of Criminal Justice Services, 1976).

TABLE 44

DRUG FELONY ACTIONS IN ERIE COUNTY

	1972	1973	1974	1975	Jan.-June 1976
Arrests	787	856	1,385	1,180	414
Indictments	106	185	271	209	95[a]
Dispositions[b]	108	152	211	241	121
Convictions[b]	70	84	145	189	107
Prison and jail sentences[b]	22	20	43	75	50
As a percentage of convictions	31.4%	23.8%	29.7%	39.7%	46.7%
As a percentage of arrests	2.8%	2.3%	3.1%	6.4%	12.1%

[a]Superior court arraignments.

[b]Superior court actions only.

Source: New York State Division of Criminal Justice Services, Forms A,D,C and E.

among local enforcement units and to upgrading the quality of investigations and arrests of narcotics offenders.

Even with the emphasis on narcotics offenses, marijuana arrests continued to account for the majority of all felony drug arrests in Erie County. Class A drug arrests accounted for only between 12% and 14% of all felony drug arrests during 1975 and 1976.

In contrast to the sharp decline in New York City, there was no signficant reduction after 1973 in the frequency of indictment following a felony drug arrest. Under the Emergency Dangerous Drug Control Program, three new court parts were assigned to Erie County, and the District Attorney assigned eight additional assistant district attorneys to full-time prosecution of drug cases. This additional manpower, combined with the large increase in arrests noted above, led to the substantial increase in drug indictments in 1974. According to prosecutors, narcotics indictments increased more than drug indictments as a whole, while marijuana cases accounted for a steadily declining percentage of drug indictments after 1973.

CONVICTIONS AND SENTENCES TO PRISON AND JAIL. Unlike New York City, Erie County's conviction rate in drug cases increased under the new law, while dismissals declined. In 1972, 65% of all drug cases disposed of in superior court resulted in convictions. During the first half of 1976, the proportion increased to 88%. In 1975, there were nearly three times as many drug convictions in Erie County superior courts as there had been in 1972. Dismissals in drug cases fell from 30% of dispositions in 1972 to only

12% in the first half of 1976. A rise in dismissals was prominent in New York City.

As convictions increased in Erie County, so did the number of convicted drug offenders sentenced to prison and jail. In the first half of 1976, 50 offenders were incarcerated following a superior court conviction, compared to only 20 in all of 1973. Sentences to State correctional institutions increased even more, indicating that the length of time under incarceration will also increase. In 1973, only 11 convicted drug offenders were sentenced to State prisons. In 1975, 50 were so sentenced.

A significant result of Erie County's success in processing drug cases was that the risk of incarceration for persons arrested for drug offenses increased sharply. In 1973, only one superior court prison or jail sentence was imposed for every 50 drug felony arrests. During the first half of 1976, one prison or jail sentence was imposed for every eight drug felony arrests. Even with this increase, however, the risk of incarceration for arrested drug defendants was no greater than the statewide average.

Defendants arrested for class A drug crimes faced a higher risk of punishment than defendants arrested for other drug felonies. In the first half of 1976, for example, 51 class A drug arrests were made in the county (out of 414 drug felony arrests), and 24 convicted class A offenders were sentenced to prison, representing 47% of arrestees.[42] Together with the much higher volume of prison and jail sentences, these figures suggest that the risk of incarceration for arrested narcotics offenders increased substantially under the 1973 law.

THE ABSENCE OF COURT DELAY. In 1974, the backlog of superior court drug cases rose by 60, a modest rise which was accounted for solely by class A cases. By 1975, the courts had already begun to reduce this backlog.

One explanation for the relative ease in disposing of cases after the initial upsurge in the backlog during 1974 is that, surprisingly, there was no significant increase in trials among defendants after the law took effect. Defense attorneys explained that defendants indicted for class A-III felonies were generally offered lenient sentences in exchange for a plea of guilty. A study of class A-III cases disposed of in Erie County during 1975[43] revealed that nearly 90% of the defendants who pled guilty after being indicted for a class A-III felony received minimum terms of imprisonment of one year, the shortest term permitted by the law. On the other hand, none who were convicted of a class A-III felony after a trial received a minimum sentence of one year, and 80% received sentences of three years or more. Apparently, the high cost of demanding a trial was recognized by most defendants.

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42. Some of the 24 offenders sentenced to prison were arrested before January 1976.

43. Survey by the Drug Law Evaluation Project described in *Staff Working Papers*, No. 4.

THE PREDICATE FELONY PROVISION. Local officials in Erie County stated that the courts experienced few problems in implementing the predicate felony provision of the new law. Although defendants with prior felony convictions were often permitted to plead guilty to a misdemeanor rather than face indictment, they were nevertheless more likely to be indicted than defendants without prior convictions.

The District Attorney's office routinely investigated a defendant's prior conviction record immediately after arrest. Prosecutors reported that although the predicate felony provision resulted in a moderate increase in the trial rate in cases involving repeat offenders, the courts encouraged predicate felony defendants to plead guilty by offering prison sentences of relatively short length.[44]

Drug Use and Availability

Despite the fivefold rise in the number of prison and jail sentences between 1972 and 1976, there was [illegible] evidence of a sustained decrease in the use or availability of heroin in Erie County. However, there is evidence of a drop in heroin use du[illegible]974. Officials in Erie County are in wide agreement about these general findings, which are confirmed by sketchy data.

The directors of the County's two methadone maintenance clinics and numerous other treatment program officials believed that the introduction of the 1973 law had temporarily caused narcotics traffic to move "underground." Narcotics enforcement officials from the Buffalo Police Department and the U.S. Drug Enforcement Administration agreed. There was some disagreement about the duration of this disruption of normal dealing patterns. The increased secretiveness in the heroin market was said to have persisted for between two and nine months.

All officials contacted by the Project felt, however, that over the long term the level of heroin use in Buffalo had not been affected by the law.

The two indicators of heroin use for Erie County are consistent with these observations, but, because they fluctuate widely from year to year, do not contribute powerful statistical support. Narcotics deaths and cases of serum hepatitis declined during 1974 and rose during 1975 and 1976 (Chart 18). Serum hepatitis cases in 1976 were as numerous as they had been in 1973.[45]

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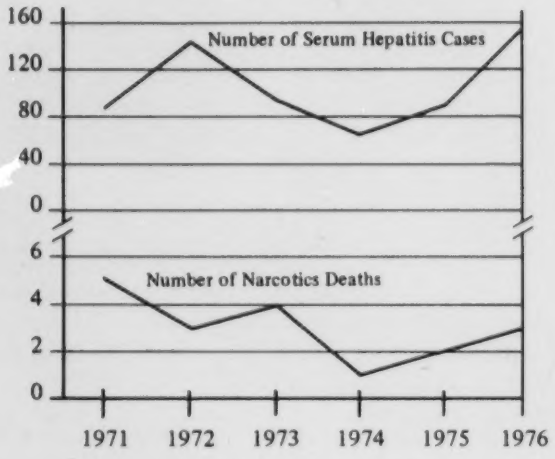
44. Mandatory prison sentences were required, but there was some discretion in setting periods of parole ineligibility.

45. Another indicator of the 1974 recession in drug use comes from hospital emergency rooms. These data, which include all drugs, not just narcotics, cover only the post-law period. They show that during the first six months of 1974, the number of people seeking medical assistance for drug-related emergencies was sharply lower than it had been during the preceding six months. Beginning with the second half of 1974, these figures rose again through the first half of 1976. The Drug Abuse Warning Network supplied a special data set of reports from facilities which have reported continuously to the DAWN system.

CHART 18
ERIE COUNTY
INDICATORS OF NARCOTICS USE



Source: New York State Department of Health.

The temporary caution in the heroin market reported by officials, and the resulting decline in heroin use which is suggested by the data, may have resulted from publicity about the law. Subsequent rises in the indicators during 1975 and 1976 suggest that the 1974 drop was not due to a deterrent effect resulting from larger numbers of prison sentences, since these sentences increased each year between 1973 and 1976. Rather, the drop may have been a consequence of the fear evoked by the statewide publicity campaign which preceded enactment of the law.

COMPARISONS WITH OTHER CITIES. Two out-of-state cities, Pittsburgh and Boston, were chosen as comparisons for Buffalo.[46] These cities were chosen because they are demographically similar to Buffalo, but were not subject to the influence of the 1973 drug law. Narcotics use indicators from

46. See *Staff Working Papers*, No. 1, for discussion of the use of comparison areas for New York State jurisdictions. Most of the heroin use and trafficking in Erie County was concentrated in Buffalo. For purposes of this analysis, Buffalo can stand as a proxy for Erie County.

each of the cities were compared to indicators for Buffalo in order to isolate post-law changes unique to Buffalo.

The contrasts between Buffalo and these other cities could not be gauged precisely, but they tend to support the observation of a drop in heroin use in Buffalo during 1974. Changes in narcotics deaths in Pittsburgh and Boston contrast with the changes in Erie County. Deaths from narcotics in both Pittsburgh and Boston were higher in 1974 than in 1973, whereas in Buffalo they were lower in 1974.

Movements of serum hepatitis in Boston contrast with the changes in Buffalo: hepatitis in Boston was lower in 1973 than in 1974, while in Buffalo it was lower in 1974. In Pittsburgh serum hepatitis remained unchanged between 1973 and 1974.

NON-NARCOTIC DRUGS. Officials reported that non-narcotic drugs such as amphetamines, barbiturates, sedatives, and cocaine were also available in the illicit drug markets of Erie County. Increases in the availability and use of cocaine and in the frequency of poly-drug use were mentioned by several treatment program administrators. No relationship between these developments and the 1973 law was noted.

Monroe County

Monroe County, bordering Lake Ontario, is the fifth largest county in the State outside New York City. Approximately 40% of its 700,000 residents live in Rochester, the State's third largest city.

Like its close neighbor, Erie County, Monroe experienced a high level of drug law enforcement activity after the 1973 drug law became effective. Unlike Erie County, however, the superior courts in Monroe encountered noteworthy difficulties in processing the most serious drug felonies.

There was little evidence of reduced heroin traffic in Monroe County following introduction of the 1973 law.

The Implementation Process

Drug felony actions in Monroe County between 1972 and 1976 are shown in Table 45.

ARRESTS. Local officials believed that the large increase in drug arrests during 1974 was only partly a response to the 1973 law. A more important factor, they contended, was the establishment of a U.S. Drug Enforcement Administration Task Force in Rochester in April 1974. The introduction of the Task Force produced a considerable influx of manpower and resources for drug enforcement in the Rochester area.

As a result of the interagency coordination which the Task Force prompted, there was a sharp increase in narcotics arrests throughout the

TABLE 45

DRUG FELONY ACTIONS IN MONROE COUNTY

	1972	1973	1974	1975	1976
Arrests	415	372	660	569	445
Indictments	133	153	281	224	N.A.
Dispositions[a]	166	126	223	188	179
Convictions[a]	104	90	143	151	121
Prison and jail sentences[a]	28	23	41	48	57
As a percentage of convictions	26.9%	25.6%	28.7%	31.8%	47.1%
As of a percentage of arrests	6.7%	6.2%	6.2%	8.4%	12.8%

[a]Superior court actions only.

N.A.: Not available.

Sources: New York State Division of Criminal Justice Services, Forms A,C,D and E, and Felony Processing Forms.

County. The head of the Task Force confirmed that about 75% of the arrests made by his unit were for narcotics offenses. Both the County Sheriff and the head of the Narcotics Unit of the Rochester Police Department agreed that narcotics arrests had accounted for a greater share of drug arrests since 1974. They also believed that the establishment of the Task Force resulted in higher quality investigations and prosecutions of narcotics offenders. In common with local enforcement agencies in other counties, these agencies had been placing far less emphasis on marijuana arrests after 1973 than they had before.

INDICTMENTS. These changing priorities in enforcement were reportedly matched by prosecutorial policies, which began to concentrate heavily on narcotics offenses. Monroe County received three additional court parts under the Emergency Dangerous Drug Control Program, nearly doubling the size of its superior court system. In 1976, there were seven superior court judges sitting in Monroe County.

Creation of the additional court parts enabled the District Attorney to hire new staff as well. Partly as a result of these additional resources, and partly because of the jump in arrests, drug indictments in Monroe County rose by 84% from 1973 to 1974.

Narcotics prosecutions accounted for a greater share of all drug indictments after 1973. The assistant district attorney in charge of drug prosecution in Monroe County stated that the 1973 law also contributed to the increase in narcotics indictments because the stiffer penalties made it easier to persuade defendants to act as informants. Enforcement officials capitalized on these opportunities to open cases against additional defendants. In contrast to the rise in narcotics indictments, there was a

steady decline in the number of prosecutions for marijuana offenses after the 1973 law took effect.

The emphasis placed by the District Attorney on narcotics offenses is evident from the data: while only 21% of felony drug arrests in 1975 were for class A (usually narcotics) crimes, those crimes accounted for 57% of all drug indictments.

CONVICTIONS. Together with the rise in drug indictments, drug law convictions in the superior court rose by 59% in 1974 and increased again in 1975. Convictions for heroin and cocaine offenses rose at an even faster pace after 1973, according to prosecutors.

PRISON AND JAIL SENTENCES. The number of drug defendants sentenced to prison or jail after a superior court conviction increased substantially as well, from 28 in 1972 to 57 in 1976. As in Erie County, length of imprisonment will increase, as the number of drug offenders sentenced to State correctional institutions rose from only 15 in 1972 to 53 in 1976.

These increases occurred despite delays in processing class A cases in the courts. Without those delays, prison sentences would have risen more rapidly.

COURT DELAY. In 1974, the backlog of drug cases in the County's superior courts rose by 58, almost all of which were class A cases. Unlike most other upstate counties, Monroe County continued to experience backlog growth 1975, when pending drug cases rose by 36 (Table 45). Of class A indictments under the new law, only 40% had been disposed of by the end of 1975 (Table 46).

TABLE 46

CLASS A DRUG CASES IN MONROE COUNTY

	1973	1974	1975
Indictments	5	87	127
Dispositions	0	30	59[a]
Convictions	0	24	37[a]
Prison sentences	0	24	35[a]

[a]Full year estimate based upon the first nine months.

Sources: New York State Division of Criminal Justice Services, Forms A,C,D and E, and Felony Processing Forms.

A major reason for the delay in case processing was that drug defendants in superior court took their cases to trial at a far higher rate than before. The trial rate in drug cases rose from two percent in 1973 to seven percent in 1974 and to eleven percent in 1975. Trials in class A cases were chiefly responsible for the increase. About one-third of class A defendants took

their cases to trial during 1974 and 1975, a slightly higher percentage than in New York City.

Part of the reason for the high trial rate among class A defendants was that the District Attorney in Monroe County restricted plea bargaining in class A cases. According to prosecutors, probably no more than one-half of all defendants indicted on class A-I or class A-II felonies were allowed to plead guilty to a class A-III offense. Statewide, about two-thirds of indictments for class A-I and A-II crimes were disposed of by pleas to class A-III offenses.[47] Another factor accounting for the high trial rate was that judges in Monroe County did not give more lenient sentences to class A-III defendants who pled guilty instead of going to trial. A survey of sentences imposed on defendants indicted and convicted for class A-III offenses in 1974 and 1975, for example, showed that 67% of the defendants who pled guilty received one year minimum sentences, while a similar 60% of the defendants convicted at trial received the one-year minimum term.[48]

Neither prosecutors nor the defense bar believed that the problem of court delay in Monroe County could be ascribed to an increase in defense motions in drug cases or to greater leniency among judges in granting continuances.

Drug Use and Availability

Observers in Monroe County had a stronger sense of the temporary disruption in the heroin market than officials in other counties. After the new law went into effect, a reduction in the amount of heroin involved in single transactions was noted. Dealers presumably followed this practice to avoid arrest for class A-I or A-II offenses, which carry the highest penalties. Some police officers in other counties and in New York City reported a similar development. The high price and low quality of heroin available to users was also noted.

Another result of the law was reported by treatment personnel, who said that it became more difficult to enroll users in treatment after the 1973 law was enacted. Treatment adminsitrators felt that users concealed their drug use more carefully and that treatment programs were popularly associated with the law because the widespread advertising campaign in the summer of 1973 urged users to enter treatment before the law went into effect.

Despite these changes in drug dealing patterns, which might have been expected to reduce consumption of heroin somewhat, officials in Monroe County believed that the laws had not produced a decline in the volume or supply of heroin or in the number of users.

Directors of three treatment programs agreed with the Sheriff, several

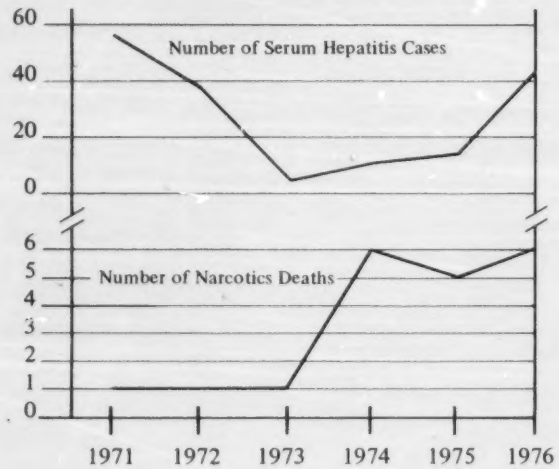
47. See *Staff Working Papers*, No. 4.

48. Survey by the Drug Law Evaluation Project described in *Staff Working Papers*, No. 4.

assistant district attorneys who conducted narcotics prosecutions, and the head of the Narcotics Unit of the Rochester Police Department that narcotics use and trafficking remained reasonably stable after 1973. The head of the Drug Enforcement Administration Task Force confirmed this, saying that in mid-1976 there was as much narcotics use as there had been in the early 1970s. All these officials agreed that there was no permanent interruption in the supply of drugs to users.

Increases in narcotics deaths and cases of serum hepatitis in Monroe County after 1973 substantiate this view (Chart 19).

CHART 19
MONROE COUNTY
INDICATORS OF NARCOTICS USE



Source: New York State Department of Health.

Westchester County

Westchester County is the fourth largest county in the State outside New York City. It borders New York City on the north, and its heroin traffic and use patterns are influenced by this proximity. According to reports of criminal justice officials, effectiveness in implementing the 1973 law in Westchester improved as time went by. Neither these officials nor drug treatment program administrators believed that there was a persistent

drop in heroin use after the new law went into effect. These views are generally supported by the available data. Some evidence indicates that a temporary decline in heroin use occurred during 1974, as in Erie and Monroe counties.

The Implementation Process

Judges, prosecutors, and police officials reported that the efficiency of the criminal justice system in Westchester had improved between 1974 and 1977. Three new court parts were opened in 1974 under the Emergency Dangerous Drug Control Program, nearly doubling the number of superior court judges hearing felony cases in the County. (In early 1977 there were between seven and nine superior court justices presiding over felony cases at any one time.)

According to local officials, the total number of cases pending in superior court fell by half after 1975, processing times were cut, and drug cases were disposed of more quickly than non-drug cases. Although more drug felonies were disposed of by trial under the new law than before, the average processing time for drug felonies in superior court was 200 days in 1976, compared to 229 days for all felonies.[49] These were still much longer delays than typical in some upstate counties, but reportedly lower than in the past. Comparable disposition times for the suburban counties around New York City (including Westchester) were 373 days for drug felonies and 272 days for all felonies.[50] In New York City, drug indictments also took longer to dispose of than non-drug indictments.

Several officials gave partial credit for Westchester's improvement to a computerized management information system installed during 1975, which allowed the administrative judge to keep track of all pending cases on a daily basis.

Some practitioners in Westchester had the same reservations about the law that were common throughout the State. Several judges, assistant district attorneys and defense attorneys criticized the law because it treated first offenders too harshly, did not offer treatment alternatives to users and first offenders, provided mandatory sentences for small-time pushers (until July 1976), and concentrated on low-level dealers instead of major distributors. In spite of such reservations, these officials said that the 1973 law did not cause major problems for the County's criminal justice system.

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49. Although the data in Table 45 do not show it, court officials reported that the initial backlog developed in 1973 and 1974 was effectively reduced by the three new court parts.

50. Westchester County processing time supplied by the office of the Westchester County District Attorney. Processing time for suburban counties around New York City is from the Division of Criminal Justice Services, *Felony Processing Report*, 1976. The suburban counties around New York City are Nassau, Suffolk, Westchester, and Rockland.

ARRESTS AND INDICTMENTS. Drug felony actions in Westchester County between 1972 and 1976 are shown in Table 47.

TABLE 47

DRUG FELONY ACTIONS IN WESTCHESTER COUNTY

	1972	1973	1974	1975	1976
Arrests	442	469	613	439	475
Indictments[a]	205	219	234	199	183
Dispositions[b]	264	144	188	170	166
Convictions[b]	204	119	169	144	153
Prison and jail sentences[b]	52	34	34	60	75
As a percentage of convictions	25.5%	28.6%	20.1%	41.7%	49.0%
As a percentage of arrests	11.8%	7.2%	5.5%	13.7%	15.8%

[a]Figures for 1972-1975 refer to defendants indicted. The figure for 1976 is defendant-indictments (see Glossary).

[b]Superior court actions only.

Sources: New York State Division of Criminal Justice Services, Forms A,C,D and E, and Felony Processing Forms; Westchester County District Attorney's Office.

Police and district attorney staff reported that arrests under the new law were more heavily concentrated on the more serious drug offenses.[51] Most felony arrests involving heroin were of street level dealers, who were caught with small amounts of dilute heroin. Arrests for heroin and cocaine generally involved smaller quantities of drugs than in New York City. Until about the middle of 1976, many arrests were made for marijuana offenses. Later, marijuana was de-emphasized by both the Sheriff and the District Attorney in anticipation of the enactment of decriminalization proposals then pending in the State Legislature.

Assistant district attorneys also reported that there had been fewer indictments for marijuana offenses since 1973 and that a larger share of indictments had been for offenses involving cocaine, narcotics, and other dangerous drugs.

After the 1973 law went into effect, class A felonies rose from 31% of all drug indictments in 1974 to more than 52% in 1976. Westchester prosecutors maintained a high conviction rate in drug felony cases after 1973.

51. Most drug arrests in Westchester were made by the Sheriff, who employed a substantial number of undercover agents to make drug purchases and develop cases against dealers. Although there was some loss of manpower in 1975, possibly accounting for the fall in arrests, new agents were restored to the force in 1976, indicating the continued importance of drug arrests in the Sheriff's enforcement policy.

PRISON AND JAIL SENTENCES. The number of prison and jail sentences imposed on defendants convicted of drug offenses in Westchester County superior courts doubled between 1973 and 1976, when there were 75 such sentences, and indications are that the risk of incarceration facing a defendant arrested for a drug felony increased after 1974. During 1972 and 1973, between 25% and 30% of superior court drug convictions resulted in a sentence of incarceration. In 1975, that percentage rose to 42%, and in 1976 to 49%.

If Erie County can be used as a guide, these increases in the likelihood of incarceration masked even greater increases faced by class A offenders. Westchester offenders arrested for a class A crime, then, probably faced a substantial risk of imprisonment.

Drug Use and Availability

Most of the heroin available in Westchester was originally purchased in New York City and sold within the County in small quantities. The heroin available in Westchester was generally higher in price than the heroin available in New York. Some of it was marked by the "brand" names found on the streets of Harlem. Narcotics use was concentrated in the main urban areas, including Yonkers, New Rochelle, and Mount Vernon. There was reportedly some use as well among the affluent youth of the County (Westchester has the second highest family income among counties in the State).

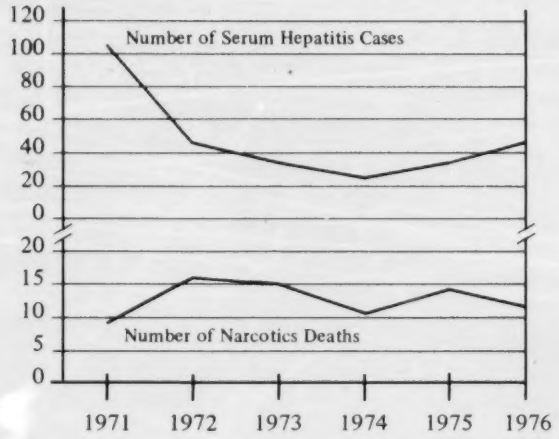
There is no evidence of a persistent drop in the use or availability of heroin in Westchester County under the 1973 law. Nearly every treatment and law enforcement official interviewed agreed that a market for heroin existed in the larger cities, towns, and villages in Westchester. Officials from treatment programs concurred with assistant district attorneys and the Sheriff's Senior Criminal Investigator for Narcotics that heroin use was as prevalent in mid-1976 as it had been before the law was implemented.

Many officials repeated an observation that was common throughout the State: that the introduction of the 1973 drug law had resulted in more covert patterns of heroin dealing. In a pattern similar to that evident in other counties, the caution exhibited by drug dealers was most apparent during the first three or four months the new law was in effect. The caution apparently persisted to some extent in Westchester. Street dealers preferred to sell only to individuals they knew after 1973, and this made it more difficult for police to make undercover purchases. Some dealers would sell only to users, in order to be certain that the buyer was not an undercover agent.

Although it would be logical to conclude that these changes in behavior would have led to some reduction in heroin use, no such reduction was

reported by local officials. The Chief Counsel of the Criminal Division of the Legal Aid Society (indigent counsel) believed the law produced only a temporary shock effect and that this caused a drop in his drug caseload from October to December 1973. After that, he said, street dealing resumed its normal patterns and his drug caseload returned to previous levels. After the new law took effect, fewer of his defendants admitted to their addiction, but he thought this might have been due to increased reluctance of users to identify themselves rather than to any decrease in heroin use.

CHART 20
WESTCHESTER COUNTY
INDICATORS OF NARCOTICS USE



Source: New York State Department of Health.

The limited data available concerning narcotics deaths and serum hepatitis are consistent with the views of these officials. Examination of the data (Chart 20) does not suggest a notable change in narcotics use between 1973 and 1976. Neither do admissions to the County's methadone maintenance clinics show any changes which can be associated with the new law.[52]

52. Admissions figures for the methadone maintenance clinics were obtained from the Methadone Information Center, Community Treatment Foundation, Inc., New York City.

NON-NARCOTIC DRUGS. According to local treatment program personnel and enforcement officials, a wide variety of illegal drugs were used in the County. Cocaine became increasingly prevalent in Westchester in the year and a half to two years preceding July 1976, and a variety of pills were also available locally.

Nassau County

Nassau County, which borders New York City on the east, is the State's largest county outside the City. Its 1970 population stood at 1,425,000. Like Westchester, Nassau is a largely suburban county, and its drug distribution patterns are influenced by its proximity to New York City. Because Nassau has no large urban centers, its drug use patterns were particularly difficult to gauge accurately. This attribute is shared by Suffolk County, Nassau's neighbor to the east. The information available does not indicate a marked change in heroin use under the 1973 law. On the other hand, officials report that use of non-narcotic drugs expanded in the period after 1973.

The Implementation Process

Developments after 1973 in drug felony prosecutions in Nassau County were distinguished by two main features.

First, the shift in enforcement and prosecutorial priority away from marijuana offenses, common in many other counties, appears to have been even more pronounced in Nassau.

Second, although the Nassau County superior courts were able to reduce their total drug case backlog after 1973, they had greater difficulty than any of the other four counties in disposing of class A cases. Even the reduction in the drug case backlog which did occur in 1975 and 1976 was due mainly to a drop in marijuana indictments, and not to an increase in the annual number of drug cases disposed of.

As a result of these two factors, total felony arrests, indictments and superior court convictions for drug offenses all declined after 1973, and there was also a decline after 1973 in the number of prison and jail sentences imposed on drug defendants convicted in superior court (Table 48).

Local police officials and prosecutors reported that after 1974 their emphasis shifted from offenses involving marijuana to crimes involving heroin and cocaine. One result of this change in policy was that class A cases accounted for a much higher share of drug indictments during 1975 and 1976 (41%) than in 1974, when class A cases had accounted for only 16% of all drug indictments.

In comparison with other counties, the imprisonment rate for convicted

TABLE 48

DRUG FELONY ACTIONS IN NASSAU COUNTY

	1972	1973	1974	1975	Jan.-June 1976
Arrests	1,180	1,451	1,320	846	334
Indictments	883	831	709	353	152[a]
Dispositions[b]	979	705	550	505	319
Convictions[b]	743	603	410	354	207
Prison and jail sentences[b]	151	117	72	73	56
As a percentage of convictions	20.3%	19.4%	17.6%	20.6%	27.1%
As a percentage of arrests	12.8%	8.1%	5.5%	8.6%	16.8%

[a]Superior court arraignments.

[b]Superior court actions only.

Source: New York State Division of Criminal Justice Services, Forms A,C,D and E.

class A drug offenders in Nassau County was low. During 1975 and the first half of 1976, for example, only 55% of convicted class A offenders were sentenced to prison. The statewide average was 85%. Nassau's low rate of imprisonment was due to two factors. First, a large proportion of class A defendants in Nassau County were 16 to 18 years old and had been sentenced to probation terms as Youthful Offenders. Second, the District Attorney made liberal use of the portion of the 1973 law which permitted probationary terms without imprisonment for class A-III offenders who supplied information aiding in the arrest and prosecution of other drug offenders. During the first two years the law was in effect, fully 25% of all sentences in class A-III cases came under this provision.

The ratio of superior court prison and jail sentences to felony drug arrests fell from 13% in 1972 to only 6% in 1974. This ratio rose to 9% in 1975, however, and to 17% in the first half of 1976. These figures suggest that it was only in 1976 that the new law began to have a significant impact on drug dispositions in Nassau County.

COURT DELAYS. The Nassau County superior courts experienced considerable delay in disposing of class A cases under the new law (Table 49). While the drug case backlog as a whole actually fell after the law was enacted (Table 48), the courts disposed of only one-fifth of all class A indictments up to September 1975.

The delay in disposing of class A drug cases can be attributed to three factors.

First, until the second half of 1975, many of the class A-III cases were

TABLE 49

CLASS A DRUG CASES IN NASSAU COUNTY

	1973	1974	1975	Jan.-June 1976
Indictments	12	120	143	66[a]
Dispositions	0	14	71	78
Convictions	0	8	58	67
Prison sentences	0	7	23	46

[a]Superior court arraignments.

Source: New York State Division of Criminal Justice Services, Forms C, D and E.

held open by the courts until the Legislature resolved the question of whether the State's Youthful Offender provisions were applicable to class A drug offenders.[53] Conversations with police, prosecutors, and judges in Nassau County revealed that some judges and assistant district attorneys believed that the penalties for class A-III offenders were too harsh for younger offenders. These judges and prosecutors were reportedly willing to hold the cases open. Not until July 1975, when the Legislature extended the Youthful Offender provisions to class A-III drug offenders, were many of these cases finally disposed of.

Second, in class A cases involving informants, the time taken to evaluate the information provided added considerably to the time needed for processing.

Finally, after a proposal in the Legislature in 1975 to ease the plea bargaining restrictions for class A-III offenders, many defense lawyers tried to postpone the disposition of class A-III cases in anticipation that the proposal would eventually be enacted into law.[54] Judges did not always cooperate with these tactics, but the efforts of defense lawyers do appear to have slowed down the disposition of class A-III cases.

The delay in processing cannot be accounted for by an increase in the trial rate (trials as a percentage of net dispositions). The trial rate in drug cases in the Nassau County superior courts had been low historically, and did not increase significantly after 1973. In 1975 it stood at 2.8% compared to 2.3% in 1972. The trial rate in class A cases between January 1974 and June 1976 was 12%, considerably lower than the statewide average.

Between October 1975 and June 1976, the Nassau County superior courts finally succeeded in stabilizing the backlog of class A cases, largely

53. See above, p. 81.

54. The Legislature first passed this proposal, which was similar to the 1976 amendment, during 1975; it was vetoed by the Governor.

as a result of the extension of Youthful Offender treatment to class A-III offenders.[55]

Drug Use and Availability

According to treatment program and enforcement officials, heroin use was not as widespread in Nassau County as in other areas of the State, and the dealing that did go on was generally confined to small amounts of the drug. Use of other drugs, including cocaine, depressants, and stimulants, was said to be increasing.

The heroin in Nassau came chiefly from New York City. An agent from the U.S. Drug Enforcement Administration confirmed the observations of the narcotics investigator for the Nassau District Attorney and several treatment officials that enactment of the 1973 drug law had no long term effect on the supply of heroin in the County. Enforcement officials and treatment personnel agreed with their colleagues in other counties that for a short time after the new law became effective, trafficking was more secretive than usual, but no lasting impact on the supply or level was detected. As in other jurisdictions, business reportedly returned to "normal" in a short time.

The two recent drug use trends most frequently cited in Nassau were the growth of cocaine use and an increasing prevalence of poly-drug use. Both trends were traceable to the early 1970s.

Although it has not been possible to find quantitative measures of cocaine and poly-drug use in Nassau, two indicators of narcotics use in the County are available. Cases of serum hepatitis and numbers of deaths from narcotics are shown on Chart 21. Serum hepatitis declined between 1971 and 1974, before rising during 1975 and 1976. From 1970 onward, narcotics deaths fluctuated with no apparent trend. Neither indicator provides evidence of a notable change in heroin use after the 1973 law was implemented.

Suffolk County

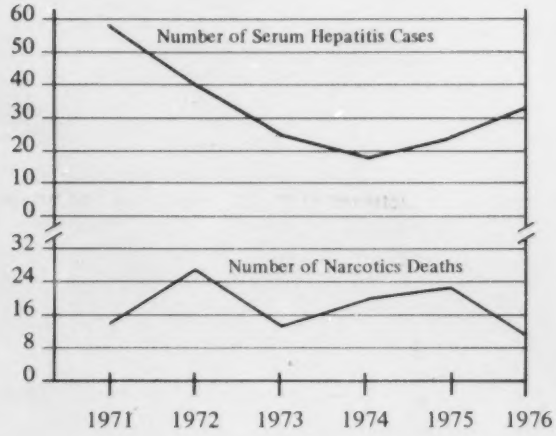
Suffolk County, which occupies the eastern portion of Long Island, had a suburban and rural population of 1,125,000 in 1970. Suffolk is separated geographically from New York City by Nassau County.

The Implementation Process

Like New York City and Nassau County, Suffolk County courts had difficulty implementing the 1973 drug law. The law was enacted at a time

55. Another factor in speeding disposition after July 1975 may have been the adoption of "speedy trial" standards by the Administrative Board of the Judicial Conference. According to one observer, the new standards may have made judges more reluctant to hold cases involving potential informants open for long periods of time.

CHART 21
NASSAU COUNTY
INDICATORS OF NARCOTICS USE



Source: New York State Department of Health.

when the County's superior court was experiencing a growing backlog in all cases, and new law drug cases became a part of this growth and contributed to it. Despite the addition of two judges under the Emergency Dangerous Drug Control Program, disposition of new law drug cases, especially class A cases, was a slow process. Only 57% of all drug indictments during 1974 and 1975 were disposed of in those years.

Interviews with prosecutors revealed that post-1973 policies for dealing with drug offenses closely resembled the practices followed in Westchester County. After the enactment of the 1973 law, the District Attorney's staff concentrated its resources on cases involving heroin and cocaine. This led to more intensive screening of marijuana cases, and a reduction in the overall rate at which felony drug arrests led to indictment. Class A drug indictments, typically involving the harder drugs, accounted for approximately 40% of the total drug indictments filed in Suffolk during 1974 and 1975.

Judges, prosecutors and the defense bar all agreed that drug cases, notably class A drug cases, were especially difficult to dispose of during

1974 and 1975, when the backlog of non-drug cases was rising quickly as well. Part of the reason for delays in drug cases was an increased demand for trials, common in several parts of the State. Further, as in Nassau County, the defense bar often wished to postpone the disposition of cases for clients who faced the possibility of a mandatory prison sentence, and the press of other court business made it possible to obtain adjournments rather easily. In addition, because the 1973 penalties were severe and mandatory many defendants were unwilling to plead guilty until all possible pre-trial hearings had been held.

Partially as a result of the length of time required to dispose of drug cases, the number of prison and jail sentences imposed on drug defendants convicted in superior court was lower in 1975 than in any of the three preceding years (Table 50).

TABLE 50

DRUG FELONY ACTIONS IN SUFFOLK COUNTY

	1972	1973	1974	1975	1976
Arrests	N.A.	N.A.	1,041	782	745
Indictments	349	279	335	264	204[a]
Dispositions[b]	320	284	186	157	274
Convictions[b]	286	244	164	132	217
Prison and jail sentences[b]	58	51	49	23	104
As a percentage of convictions	20.3%	20.9%	30.0%	17.4%	47.9%
As a percentage of arrests	N.A.	N.A.	4.7%	2.9%	14.0%

[a]Superior court arraignments.

[b]Superior court actions only.

N.A.: Not available.

Source: New York State Division of Criminal Justice Services, Forms A.D and E.

The addition of three superior court parts in 1976 had a dramatic positive impact on implementation of the 1973 law in the County. The relaxation of the plea bargaining restrictions in class A-III drug cases in mid-1976 also contributed to improved implementation. Although the backlog of non-drug felony cases continued to grow in 1976, this trend was reversed for drug cases. As a result, there were 75% more drug dispositions in superior court in 1976 than a year earlier, and over 100 prison and jail sentences, four times more than in 1975. During 1976, prosecutorial policy encouraged plea bargaining in class A-III cases, and the District Attorney

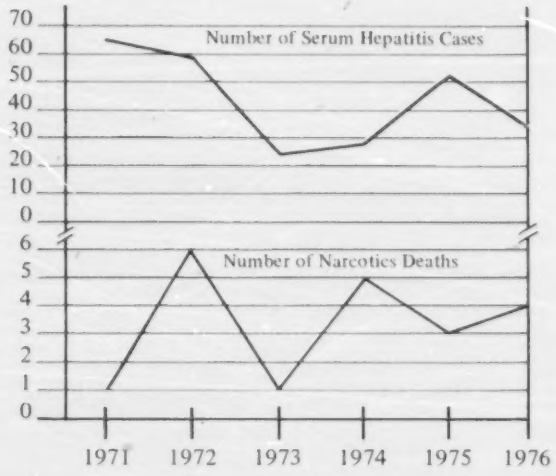
was likely to permit class A-III defendants to plead guilty to a C felony (under provisions of the July 1976 amendment to the drug law) if they provided information which would be helpful to other prosecutions.

The addition of the three superior court parts resulted in a substantial increase in the number of trials and sped the disposition of cases ending in guilty pleas. Only six drug cases were disposed of by trial in superior court during 1974 (out of 186 dispositions), and only three in 1975 (out of 157 dispositions). In 1976, 30 trials were conducted out of a total of 274 dispositions.

Drug Use and Availability

Neither narcotics-related deaths nor incidence of serum hepatitis declined in Suffolk after 1973. There were an average of only three narcotics-related deaths a year in Suffolk County between 1970 and 1976 (Chart 22). A "peak" occurred in 1972, when six such deaths were

CHART 22
SUFFOLK COUNTY
INDICATORS OF NARCOTICS USE



Source: New York State Department of Health.

recorded, but there was no trend apparent. Similarly, there was no trend in the incidence of serum hepatitis during this period. The general pattern of decline between 1972 and 1973-74 and the subsequent increase during 1975

roughly parallels New York City's pattern during this period (Charts 1, 2, 22).

The number of clients admitted to residential drug treatment programs as a result of heroin use jumped two and a half times between 1974 and 1976.[56] In addition, the percentage of people admitted for heroin use increased substantially after 1973.

Drug treatment officials in Suffolk County believed that this rise in admissions indicated growing heroin use. Local enforcement officials, judging from arrest levels and information gathered from informants, believed that illegal heroin use had not decreased since the enactment of the 1973 law. Officials of the Drug Enforcement Administration viewed heroin use in the County as stable, but pointed out that traffic in cocaine was widespread and growing.

Treatment officials believed that poly-drug use involving alcohol, marijuana, and barbiturates was the most common pattern of illegal drug use in the County. On the basis of observation of individuals seeking treatment and of contacts with the general population through preventive and educational programs, the officials reported that cocaine and LSD were also widely used. On the basis of complaints to the police and arrest activity.

56. The New York State Office of Drug Abuse Services supplied data about admissions to ODAS-funded facilities by county of residence. Admissions for treatment of use of marijuana, hashish, alcohol, inhalants, and unspecified and unknown drugs were excluded.

APPENDIX

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APPENDIX

The 1973 New York State Drug Law

The 1973 drug law was enacted as Chapters 276, 277, 278, 676, and 1051 of the 1973 Laws of New York State. Significant subsequent amendments are contained in Chapters 785 and 832 of the 1975 Laws and Chapter 480 of the 1976 Laws.

The 1973 Drug Law and Its Context

New York State law divides crimes into seven classifications, five felony and two misdemeanor, ranging from class A felony, the most serious, to class B misdemeanor, the least serious. The 1973 law divided the class A felony category into three subclassifications, A-I, A-II, and A-III. Classes A-II and A-III were created especially and exclusively for drug crimes.

TABLE A-1

CRIME CLASSIFICATION AND SELECTED EXAMPLES UNDER NEW YORK STATE PENAL LAW

Classification	Drug Crime Example	Non-Drug Crime Example
A-I Felony	Sale of 1 oz. of heroin	Murder 1° and 2°
A-II Felony	Sale of between 1/8 oz. and 1 oz. of heroin	None
A-III Felony	Sale of less than 1/8 oz. of heroin	None
B Felony	Second offender, class C drug crime	Rape 1°, Robbery 1°
C Felony	Possession of 1/2 oz. of methamphetamine	Assault 1°, Burglary 2°
D Felony	Sale of any amount of any controlled substance	Grand Larceny 2°, Forgery 2°
E Felony	None	Perjury 2°, Criminal Contempt 1°
A Misdemeanor	Possession of any amount of any controlled substance	Unauthorized use of a Vehicle
B Misdemeanor	None	Menacing

Sentencing possibilities are provided for each classification of crime. Under the 1973 law, indeterminate sentences to State prison were made mandatory for convicted class A and B felons. Certain class C and D crimes also carried mandatory indeterminate sentences. An indeterminate

TABLE A-2

First Offender Penalties for Classes of Crime Under New York State Penal Law

(as of June 1977)

Classification	Indeterminate Sentence to State Prison		Alternatives to a State Prison Sentence[a]
	Minimum	Maximum	
A-I Felony	15-25 yrs.	Life	None[b]
A-II Felony	6-8 1/3 yrs.	Life	None
A-III Felony	1-8 1/3 yrs.	Life	None[c]
B Felony	1-8 1/3 yrs.	3-25 yrs.	None
C Felony	1-5 yrs.	3-15 yrs.	Probation (5 yrs.), conditional discharge, unconditional discharge[d,e,f,g]
D Felony	1-2 1/3 yrs.	3-7 yrs.	Probation (5 yrs.), local jail (1 yr.), intermittent imprisonment (1 yr.), conditional discharge, unconditional discharge[e,f,g]
E Felony	1-1 1/3 yrs.	3-4 yrs.	Probation (5 yrs.), local jail (1 yr.), intermittent imprisonment, conditional discharge, unconditional discharge[e,f,g]
A Misdemeanor	None	None	Local jail (1 yr.), intermittent imprisonment, probation (3 yrs.), conditional discharge, unconditional discharge[f,g,h]
B Misdemeanor	None	None	Local jail (3 months), intermittent imprisonment, probation (1 yr.), conditional discharge, unconditional discharge[f,g]

[a] Excluding fines.

[b] Murder in the first degree (of a police officer under particular circumstances) is a class A-I felony that carries a mandatory death sentence.

[c] But informants who aid in the investigation or prosecution of a drug felony may be sentenced to lifetime probation.

[d] Defendants indicted for class A-III felonies who plead guilty to a class C felony, as authorized by the 1976 amendment to the law, may receive a local jail sentence of up to one year instead of an indeterminate sentence to State imprisonment.

[e] No alternative is available for defendants convicted of certain specified class C and class D felonies. Conditional discharge and unconditional discharge are not available to defendants convicted of drug felonies.

[f] Offenders who are adjudicated Youthful Offenders may not receive a State prison sentence with a maximum of more than four years.

[g] Offenders who have been found to be narcotics addicts under the procedures set forth in the New York State Mental Hygiene Law must receive either a probation sentence requiring treatment for their addiction or a sentence to either State prison or local jail.

[h] Offenders who are adjudicated Youthful Offenders in a local criminal court and who have not previously been so adjudicated or convicted of a crime may not receive a definite sentence of more than six months.

sentence means that the actual length of time the convicted felon will spend incarcerated is not established by the court. Typically, the sentencing judge chooses a maximum term, the longest time the defendant may be incarcerated, from the range of maxima provided by law. The parole board then sets the minimum term, the period during which the convicted felon is not eligible for parole, and subsequently decides the actual term after the minimum term has been served. However, in class A felony cases (and in predicate felony cases discussed below), the sentencing judge must set the minimum as well as the maximum term. In other felony cases, a sentencing judge may set a minimum term of up to one-third of the maximum he has set, provided he specifies his reason for doing so in the court record.

The 1973 law instituted an important difference between the lifetime maximum sentence required for class A drug felonies and the lifetime maximum mandated for other class A felonies. Both drug and non-drug class A felons are eligible for release from prison on parole after serving the minimum sentence set by the court. Non-drug class A felons are then eligible for release from parole supervision after five years of successfully living under this supervision. The 1973 drug law provided, however, that class A drug felons could never be discharged from parole supervision. Class A drug lifetime sentences were thus truly for the life of the convicted felon.

Drug Crime Under the 1973 Law

The 1973 law reclassified most drug crimes as more serious offenses than they had been before. In this reclassification, illustrated in Table A-3, the new law made detailed distinctions among various substances and amounts possessed or sold. A complete list of drug crimes under the 1973 law is presented in Table A-4.

TABLE A-3

RECLASSIFICATION OF SELECTED DRUG CRIMES UNDER THE 1973 LAW

Crime	Old Law Classification	New Law Classification
Sale of 1 oz. heroin	C Felony	A-I Felony
Sale of 1/8-1 oz. heroin	C Felony	A-II Felony
Sale of less than 1/8 oz. heroin	C Felony	A-III Felony
Sale of 5 mg. LSD	D Felony	A-II Felony
Possession of 5.25 mg. LSD	A Misdemeanor	A-III Felony
Possession of 2 oz. methamphetamine	A Misdemeanor	C Felony

TABLE A-4

Controlled Substance (Drug) Crimes Under 1973 New York State Drug Law

Class	Unlawful sale of	Amount	Unlawful possession of	Amount	Indeterminate Sentence to State Prison	
					Minimum	Maximum
A-I Felony	Narcotic drug	1 oz. or more	Narcotic drug	2 oz. or more	15-25 years	Life[b]
	Methadone[a]	2880 mg. or more	Methadone[a]	5760 mg. or more		
A-II Felony	Narcotic drug	1/8 oz. up to 1 oz.	Narcotic drug	1 oz. up to 2 oz.		
	Methadone[a]	360 mg. up to 2880 mg.	Methadone[a]	2880 up to 5760 mg.		
	Methamphetamine	1/2 oz. or more	Methamphetamine	2 oz. or more		
	Stimulant	5 gm. or more	Stimulant	10 gm. or more	6-8 1/3 years	Life[b]
	LSD	5 mg. or more	LSD	25 mg. or more		
	Hallucinogen	125 mg. or more	Hallucinogen	625 mg. or more		
	Hallucinogenic substance	5 gm. or more	Hallucinogenic substance	25 gm. or more		
A-III Felony	Narcotic drug	Up to 1/8 oz.	Narcotic drug with intent to sell	Any amount		
	Methamphetamine	1/8 oz. up to 1/2 oz.	Methamphetamine with intent to sell	1/8 oz. or more		
	Stimulant	1 gm. up to 5 gm.	Stimulant with intent to sell	1 gm. or more		
	LSD	1 mg. up to 5 mg.	LSD with intent to sell	1 mg. or more		
	Hallucinogen	25 mg. up to 125 mg.	Hallucinogen with intent to sell	25 mg. or more	1-8 1/3 years	Life[c]
	Hallucinogenic substance	1 gm. up to 5 gm.	Hallucinogenic substance	1 gm. or more		
	Any amount of a stimulant, hallucinogen, hallucinogenic substance, or LSD after a previous conviction for a drug offense		Stimulant	5 gm. up to 10 gm.		
			LSD	5 mg. up to 25 mg.		
			Hallucinogen	125 mg. up to 625 mg.		
			Hallucinogenic substance	5 gm. up to 25 mg.		

TABLE A-4 (continued)

CONTROLLED SUBSTANCE (DRUG) CRIMES UNDER 1973 NEW YORK STATE DRUG LAW

Class	Unlawful sale of	Amount	Unlawful possession of	Amount	INDETERMINATE SENTENCE TO STATE PRISON Minimum	Maximum
A-III Felony (cont.)			Any amount of a stimulant, hallucinogen, hallucinogenic substance or LSD with intent to sell after a previous conviction for a drug offense		1-8 1/3 years	Life[c]
B Felony	Narcotic preparation to a person under 21 A class C felony sale crime charted below (with the exception of marijuana and methadone[a]) after a prior conviction for a class C felony sale crime charted below (with the exception of marijuana and methadone[a])	Any amount	A class C felony possession crime charted below (with the exception of marijuana and methadone[a]) after a prior conviction for a class C felony possession crime charted below (with the exception of marijuana and methadone[a])		4 1/2 - 12 1/2 years	9 - 25[d] years
C Felony	Narcotic preparation Dangerous depressant Depressant Marijuana Methadone[a]	Any amount 10 oz. or more 2 lbs. or more Any amount Up to 360 mg.	Narcotic drug Narcotic preparation Methadone[a] Methamphetamine Stimulant LSD Hallucinogen Hallucinogenic substance Dangerous depressant Depressant Marijuana	1/8 oz. up to 1 oz. 2 oz. or more 360 mg. up to 2880 mg. 1/2 oz. up to 2 oz. 1 gm. up to 5 gm. 1 mg. up to 5 mg. 25 mg. up to 125 mg. 1 gm. up to 5 gm. 10 oz. or more 2 lbs. or more 1 oz. or more, or 100 or more cigarettes	1-5 years	3-15 years[c]

TABLE A-4 (continued)

CONTROLLED SUBSTANCE (DRUG) CRIMES UNDER 1973 NEW YORK STATE DRUG LAW

Class	Unlawful sale of	Amount	Unlawful possession of	Amount	INDETERMINATE SENTENCE TO STATE PRISON	
					Minimum	Maximum
D Felony	Any drug	Any amount	Any drug with intent to sell Narcotic preparation Marijuana	Any amount 1/2 oz. or more 1/4 oz. or more, or 25 or more cigarettes	1-2 1/3 years	3-7 years[f]
E Felony	No drug offenses in this category.					
A misdemeanor	No drug offenses in this category.		Any drug	Any amount	Up to 1 year local jail[g]	
B misdemeanor	No drug offenses in this category.					

[a]Classification of methadone effective August 9, 1975. Prior to that date methadone was classified as a narcotic drug.

[b]An indeterminate sentence to State prison is mandatory. Defendants indicted for these crimes may not plead guilty to less than a class A-III felony.

[c]An indeterminate sentence to State prison is mandatory with two exceptions: (1) informants may receive a sentence of lifetime probation, (2) defendants 16 through 18 years of age may be treated as Youthful Offenders (effective August 9, 1975). Since July 1, 1976 defendants indicted for these crimes may plead guilty to a class C felony and receive a local jail sentence of up to one year instead of an indeterminate sentence to State prison.

[d]An indeterminate sentence to State prison is mandatory. However, plea bargaining is unrestricted for defendants indicted for class B felonies, unless the defendant has a predicate felony record.

[e]An indeterminate sentence to State prison is mandatory, except for marijuana and methadone crime (see footnote a) and except for defendants who are originally indicted for class A-III felonies and who plead guilty to this class of felony (see footnote c). However, plea bargaining is unrestricted for defendants indicted for class C felonies unless the defendant has a predicate felony record.

[f]An indeterminate sentence to State prison is *not* mandatory. Plea bargaining is unrestricted for defendants indicted for class D felonies unless the defendant has a predicate felony record.

[g]A jail sentence is not mandatory.

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Mandatory indeterminate State prison sentences were provided for class A and B drug felonies, and for class C drug felonies except those involving marijuana. To assure that the mandated sentences would be imposed on class A offenders, plea bargaining was limited for defendants indicted for class A crimes. They were not permitted to plead guilty to a crime for which a State prison sentence was not mandated. In 1976, the law was amended to permit defendants indicted for class A-III felonies to plead down to as low a charge as a class C felony. Those defendants who pleaded down from class A-III crime to a class C crime faced mandatory incarceration, but an alternative to an indeterminate State prison sentence was provided by the amendment: up to one year in a local jail.

TABLE A-5

PLEA BARGAINING POSSIBILITIES FOR INDICTED DRUG DEFENDANTS UNDER THE 1973 LAW

Indictment Charge	Lowest Permissible Guilty Plea For First Offender	Least Restrictive Sentence with Lowest Permissible Plea
A-I Felony	A-III Felony	State imprisonment, 1 yr. to life
A-II Felony	A-III Felony	State imprisonment, 1 yr. to life
A-III Felony	A-III Felony, prior to 7/1/77	State imprisonment, 1 yr. to life
	C Felony, after 6/30/77	Local jail, 1 day
B Felony	Unrestricted	Unconditional discharge
C Felony	Unrestricted	Unconditional discharge
D Felony	Unrestricted	Unconditional discharge

Recidivism Under the 1973 Law

The 1973 law contained two types of provision governing recidivism. Certain drug crimes were reclassified as more serious felonies if they were second or subsequent offenses. For example, possession of one milligram of LSD was made a class C felony, but if the defendant charged with possessing this amount of LSD had previously been convicted of a drug offense, the charge became a class A-III felony.

The second type of recidivism provision, the second felony offender or predicate felony provision, was much wider in scope. A defendant indicted for any felony crime (drug or non-drug) who had a prior felony conviction was not permitted to plead down to a misdemeanor charge, and if convicted became a second felony offender. (A predicate felony conviction is one for which sentence was passed within ten years of the alleged commission of the new felony. Any period of incarceration served by the defendant for the predicate felony conviction is not counted when

calculating this ten year period.)

A second felony offender faced a mandatory State imprisonment sentence with specified minimum and maximum periods greater than those for first offenders. Since class A felony convictions required the imposition of a lifetime indeterminate sentence, the second felony offender provision of the 1973 law was not made applicable to class A cases.

TABLE A-6

PREDICATE FELONY PLEA BARGAINING AND SENTENCING UNDER THE 1973 LAW

Indictment Charge	MANDATORY INDETERMINATE SENTENCE		Lowest Permissible Plea
	Minimum	Maximum	
B Felony	4 1/2-12 1/2 yrs.	9-25 yrs.	E Felony
C Felony	3-7 1/2 yrs.	6-15 yrs.	E Felony
D Felony	2-3 1/2 yrs.	4-7 yrs.	E Felony
E Felony	1 1/2-2 yrs.	3-4 yrs.	E Felony

GLOSSARY

ACQUITTAL. A verdict by a judge or jury, after a trial, finding that the defendant has not been proven guilty of the crime with which he has been charged.

ADDICTION, DRUG. In this study, a physiological dependence on a drug, produced by regular use of that drug, such that the user undergoes withdrawal symptoms if he stops using it.

ARRAIGNMENT. The occasion on which a defendant in a criminal case first appears before a judge: the defendant is informed of the charge against him, bail is set, and future proceedings are scheduled. In a felony case, there may be two arraignments: one in the lower criminal court, and one in the superior court after indictment.

BAG. The common package of heroin for sale on the street ("retail" level). A bag generally contains 0.1 gram of a substance containing some heroin. The amount of heroin in a bag can vary considerably.

BAIL. The financial security given by a defendant to guarantee that he will appear in court when required. There are two types, cash bail and bail bond, and the judge may direct the amount and type to be posted.

CERTIFICATION, CIVIL (of narcotic addicts). A procedure by which individuals who are found to be narcotic addicts under the New York State Mental Hygiene Law are committed to the care and custody of the New York State Office of Drug Abuse Services for treatment.

CONTROLLED SUBSTANCE. See DRUG.

CONVICTION. The entry of a plea of guilty by a defendant, or a verdict of guilty by a judge or jury against a defendant.

CONVICTION RATE. The proportion of indictments which are disposed of by conviction, as opposed to acquittal or dismissal, in a specified time period.

COURT, LOWER CRIMINAL. One of the two types of criminal court in New York State (the other is superior court): the New York City Criminal Court, or a district, city, town or village court in jurisdictions outside New York City. A local criminal court has jurisdiction to try misdemeanor cases, and to process felony cases up to the point of indictment.

COURT, SUPERIOR. One of the two types of criminal court in New York State (the other is lower criminal court): the Supreme Court in New York City, and usually the county court in jurisdictions

outside New York City. A superior court has jurisdiction to try felony cases.

CRIME. An offense against the law. The two categories of crime in New York State are FELONY and MISDEMEANOR.

CRIME, DRUG. The illegal sale of, possession of, or possession with intent to sell any drug.

CRIME, DRUG-RELATED. In this Report, the non-drug felonies committed by drug users. The most numerous felonies in this group are robbery, burglary, and grand larceny.

CRIME, NON-DRUG. All crimes *except* drug crimes.

DEFENDANT-INDICTMENT. A unit of count used to measure the inflow of cases into a superior court. It is a summation of all defendants indicted and all indictments processed as follows: (1) When several defendants are named in one proceeding or indictment, each defendant is counted separately. (2) When one defendant is named in multiple proceedings or indictments, each indictment is counted separately.

DISMISSAL. A decision by a judge to discontinue a case without a determination of guilt or innocence. Dismissals may be of two types: a "merit dismissal" is a decision to discontinue a case on such grounds as insufficient evidence against the defendant; a "non-merit" dismissal is a decision to discontinue a case for such reasons as the consolidation of an indictment with another indictment pending against the same defendant.

DISMISSAL RATE. The proportion of indictments (or lower court filings) disposed of by dismissal, as opposed to conviction or acquittal, in a specified time period.

DISPOSITION. Any final action of the superior court on an indictment, including conviction, acquittal, or dismissal. As used in this Report, disposition does not include consolidation or abatement of actions against defendants.

DISPOSITION RATE. The ratio of court dispositions to new indictments during a specified time period, ususally expressed in percentage terms. The ratio may be less than or greater than 100%, according to whether the pending caseload is growing or shrinking.

DRUG. A controlled substance, that is, any substance listed in Schedules I through V of Section 3306 of the New York State Public Health Law. The 1973 drug law uses several terms for particular groups of drugs:

(1) Narcotic drug: includes heroin, morphine, opium, and cocaine. Included methadone until August 9, 1975.

(2) Narcotic preparation: includes codeine, morphine, and opium mixtures that have therapeutic uses.

(3) Hallucinogen: includes psilocybin, and tetrahydrocannabinols other than marijuana.

(4) Hallucinogenic substance: includes mescaline and certain forms of amphetamine.

(5) Stimulant: includes most amphetamines.

(6) Dangerous depressant: includes barbiturates and methaqualone.

(7) Depressant: includes diazepan (Valium), chlordiazepoxide (Librium), and meprobamate (Miltown, Equanil).

DRUG ADDICTION. See ADDICTION, DRUG.

DRUG-FREE TREATMENT. Treatment of drug users relying on counseling, group therapy, and work.

DRUG USE. In this study, any regular or frequent use of drugs without medical supervision; drug users include both addicted and non-addicted users. POLY-DRUG is the regular or frequent use of two or more drugs, often including alcohol.

DRUG, ILLICIT. Any drug used in violation of a statute.

DRUGS, NARCOTIC. Opium and opium alkaloids and their derivatives such as heroin, morphine, and codeine; and synthetic analgesics such as demerol and methadone. These drugs produce physiological and psychological dependence in the regular user. The 1973 drug law defined narcotic drugs to include cocaine but not (since August 9, 1975) methadone.

DRUGS, NON-NARCOTIC. A wide range of drugs, including barbiturates and hallucinogens. As used in this Report, the term "non-narcotic drugs" does not include marijuana or hashish.

FELONY. The more serious of the two categories of crime under New York law (the less serious is misdemeanor). After initial processing in lower criminal court, a felony is prosecuted by indictment in a superior court.

GRAND JURY. A body of between 16 and 23 people which hears and examines evidence concerning criminal offenses. Only a grand jury may return an indictment.

HEPATITIS, DRUG-RELATED. Types of hepatitis associated with intravenous drug use. Any of the three types (infectious type A, serum or type B, and "type unspecified") may be associated with intravenous drug use.

HEPATITIS, SERUM. A form of hepatitis often transmitted through contaminated hypodermic needles, and thus associated with intravenous drug (usually heroin) use. Also known as "hepatitis type B."

IMPRISONMENT. Incarceration in a State prison, as opposed to local jail.

IMPRISONMENT, INTERMITTENT. A sentence of incarceration up to one year in length. Typically, the offender spends weekdays at his regular employment and weekends in jail. Intermittent imprisonment is a discretionary sentence for first offenders convicted of many class D felonies and all class E felonies, as well as for all offenders convicted of misdemeanors.

IMPRISONMENT RATE. The proportion of convictions resulting in sentences to State prison or local jail.

INDICTMENT. A written accusation by a Grand Jury charging a person with a crime. Indictments are used generally only in felony cases. An indictment forms the basis for prosecution in a superior court.

INDICTMENT RATE. The proportion of felony arrests that results in indictment.

JAIL. As distinguished from a State prison, a local institution to which offenders are committed for a sentence that is both of definite length and of a duration of one year or less.

METHADONE MAINTENANCE. A form of treatment for chronic heroin users which involves daily administration of methadone to clients in clinics licensed by State and/or Federal governments.

MISDEMEANOR. The less serious of the two categories of crime under New York law (the more serious is felony). Misdemeanors are punishable by a definite sentence to jail of up to one year.

NARCOTIC. See DRUGS, NARCOTIC.

NARCOTICS-RELATED DEATHS. Deaths attributable to an overdose of narcotic drugs, usually as determined by a coroner or medical examiner. Does not include suicides, homicides, or accidental deaths in which narcotics are found.

OFFENDER. An individual convicted of a crime (as opposed to a defendant, who has been accused but not convicted).

OPIATE. A group of narcotic drugs derived from opium. See DRUGS, NARCOTIC.

PAROLE. (1)Release of an institutionalized inmate serving a State prison sentence after he has served his minimum sentence (after which the parolee lives in the community under the supervision of a parole officer); or (2) release on recognizance during the pendancy of a criminal proceeding in a court. See RECOGNIZANCE.

PLEA BARGAINING. The exchange of prosecutorial and/or judicial concessions (commonly a lesser charge, the dismissal of other pending charges, a recommendation by the prosecutor for a reduced sentence, or a combination thereof) for a plea of guilty by the defendant.

PLEAD DOWN. To plead guilty to a lesser charge. See PLEA BARGAINING.

POLY-DRUG USE. See DRUG USE.

PREDICATE FELONY. A prior felony conviction for an individual offender for which sentence was passed within ten years of the commission or alleged commission of a new felony. Time spent incarcerated because of the prior felony is not counted when calculating this ten-year period. Under the 1973 law, indicted defendants with a predicate felony record could not plead down to a misdemeanor. If a defendant with a predicate felony record were convicted of a felony, he was a "second felony offender," and subject to mandatory State imprisonment.

PRISON, STATE. A correctional facility operated by the New York State Department of Correctional Services for the confinement of persons under sentence of imprisonment. Persons receiving an indeterminate sentence after conviction for a felony are committed to State prisons. State prison is distinguished from JAIL.

PROBATION. A sentence of a court imposed on a convicted defendant, in lieu of incarceration, requiring him to comply with conditions specified by the court. Such conditions may be any the sentencing judge deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him in doing so. Probation sentences for a convicted narcotic addict may include a requirement that he undergo up to one year of treatment and rehabilitation in an inpatient treatment program. Compliance with conditions set is supervised by the offender's probation officer.

RECOGNIZANCE, RELEASE ON. Release of a defendant during the pendancy of a criminal proceeding without requirement of any form of guarantee (bail) other than the defendant's agreement that he will return to court when required.

SENTENCE, DEFINITE. A sentence to jail. Definite sentences may be up to one year in length. Defendants convicted of certain class C, D, and E felonies or of misdemeanors may receive a definite sentence.

SENTENCE, INDETERMINATE. A sentence to State prison for a felony. The sentencing judge sets the maximum length of time the offender can spend in prison, and in some cases also sets the minimum term, i.e., a period of parole ineligibility. In other cases, the parole board sets the minimum term. In all cases where an indeterminate sentence is imposed, the actual term of imprisonment is decided by the parole board. That term must lie between the minimum and maximum terms.

SUBSTANCE, CONTROLLED. See DRUG.

TRIAL. The examination of issues of fact and law in a case following a plea of not guilty by a defendant. A trial is completed when a verdict of guilty or of acquittal is reached, either by a jury (jury trial) or by a judge (bench trial).

TRIAL RATE. The proportion of indictments (or lower court filings) which are disposed of by trial, rather than by guilty plea or dismissal.

YOUTHFUL OFFENDER. A legal category that may be assigned to a person charged with a crime alleged to have been committed when he was at least 16 years old, but younger than 19. During the prosecution of a defendant who is eligible to be designated a Youthful Offender, court records are held confidential from the public and the public may be excluded from attendance at court proceedings against him. After conviction, a Youthful Offender finding may be substituted for the full-fledged conviction, and, if so, the offender may not receive an indeterminate sentence of four years or more. In addition, all official records relating to the case (police and court records) are sealed and become confidential. Under State law prior to August 9, 1975, persons charged with class A felonies were not eligible for Youthful Offender treatment. After August 8, 1975, persons charged with class A-III felonies were made eligible. In the First Judicial Department (New York and Bronx counties in New York City), persons charged with any class A felony became eligible for this treatment as a result of a court decision in 1974.

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